

WAR CRIMES WASHINGTON

18 FEBRUARY 1948

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1 Wednesday, 18 February 1948

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3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

11 Appearances:

12 For the Tribunal, all Members sitting, with
13 the exception of: HONORABLE JUSTICE LORD PATRICK,
14 Member from the United Kingdom of Great Britain and
15 HONORABLE JUSTICE E. STUART McDOUGALL, Member from the
16 Dominion of Canada, not sitting from 0930 to 1600.

17 For the Prosecution Section, same as before.

18 For the Defense Section, same as before.

19 - - -

20 (English to Japanese and Japanese
21 to English interpretation was made by the
22 Language Section, IMTFE.)

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MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now in session.

THE PRESIDENT: All the accused are present
except SATO and UMEZU, who are represented by counsel.
The Sugamo Prison surgeon certifies that they are ill
and unable to attend the trial today.

With the Tribunal's permission the accused
KAYA will be absent from the courtroom for the whole
of the day, conferring with his counsel.

General Vasiliev.

GENERAL VASILIEV: H-132. The Prosecution
attaches no importance to the fact that, as the De-
fense contends, ^{a.} the secret agreement was not renewed
at the time of the prolongation of the Anti-Comintern
Pact on November 25, 1941. First of all, it had already
played its role. Secondly, the Anti-Comintern Pact
remained in force, and besides, the Tripartite Pact
was concluded which was more far-reaching than the
secret agreement. Thus, in our submission the charges
pertaining to this part of the Indictment were fully
confirmed by evidence and were not refuted by the
Defense to any extent. I would like to add that the
Tribunal may judge the Anti-Comintern Pact, the nature
and the aims of this alliance, on the basis of a

H-132. a. Ex. 2694. T. 15,157-8

historical criterion -- that is, on the basis of the results of the development of these relationships of the allies. The Tripartite Pact resulted from these relationships.

b. The Tripartite Pact as the Final Embodiment of a Conspiracy of Aggressors Against Democratic Nations and the USSR in Particular.

H-133. The Prosecution have already offered their evidence confirming the fact that the Tripartite Pact was the final embodiment of the military and political bloc of Germany, Italy, and Japan and was a new stage of a conspiracy of aggressive nations against democratic countries aimed at the establishment of fascist rule all over the world. I would like to add that the fact that the Tripartite Pact was a military alliance and not an alliance of any other kind was stated publicly, though in vague expressions, by the Japanese Foreign Minister MATSUOKA on the day of the conclusion of the Pact, on September 27, 1940:

"There is no telling whether there might not arise occasions and circumstances calling for a momentous decision on the part of our nation. Our future is beset with countless obstacles and difficulties, which, it must be fully realized, no ordinary effort will be sufficient to surmount." ^{a.}

H-133. a. Ex. 777A, T. 7899

1 Ribbentrop in his conversation with OSHIMA on June 24,
2 1942, stated: "It was the strength of the Tripartite
3 powers that they had proceeded on the offensive from
4 the outset ..." In reply, OSHIMA said that "neither
5 he nor his government believed in conducting the war
6 defensively but that victory could only be secured
7 through further attacks." ^{b.}

8 H-134. The Tripartite Pact was undoubtedly
9 primarily directed against the Soviet Union. It be-
10 comes clear first of all from the analysis of the ne-
11 gotiations regarding the conclusion of the Pact. The
12 negotiations were started in the first half of 1938
13 on the basis of the desire to strengthen the bloc of
14 the aggressors created by the Anti-Comintern Pact. In
15 his telegram to Tokyo, sent on April 26, 1939, Ribben-
16 trop wrote:

17 "The Japanese asked for our expressed approval
18 to be able to give after the signing and publication
19 of the Pact, a declaration to the English, French and
20 American ambassadors with roughly the following con-
21 tents: The pact had developed from the Anti-Comintern
22 Pact, the partners had looked upon Russia as being the
23 enemy; England, France and America had no need to feel
24 that they were meant by it." ^{a.}

25 P-133. b. Ex. 778A, T. 7903

P-134. a. Ex. 502, T. 6097

Prince KONOYE in his memoirs stated:

1 "It was a plan to convert the Tripartite
2 Anti-Comintern Pact which was in force at that time
3 into a military alliance, the principal target being
4 the USSR." ^{b.}

5 It is clear that the new bloc being a result of the
6 Anti-Comintern Pact could only be of an aggressive
7 nature, and that it was directed against the USSR was
8 not concealed at that time. There is a Russian proverb:
9 "Bad seed cannot bring good crops." It corresponds to
10 the meaning of the English proverb: "Like father,
11 like son." The application of these proverbs is fully
12 justified in this case.
13

14 H-135. The Japanese Government suggested that
15 the USSR should be the only object of the Pact, but
16 Germany demanded that "other countries" should also be
17 included. The following is what OSHIMA, one of the
18 most active participants of the negotiations, testified:

19 "Approximately in June 1938 I received from
20 the Japanese General Staff the documents which set
21 before me a task of probing in Germany the possibility
22 of concluding a military alliance with Japan in virtue
23 of which Germany would be under obligation to enter
24 into the war with the Soviet Union, if the latter
25

H-134. b. Ex. 2735A, T. 24289

1 attacked Japan and vice versa that Japan would be
2 under obligation to enter into the war with the Soviet
3 Union, if the latter attacked Germany.^{a.}"

4 I don't see the need of deciphering the
5 interpretation of the term "attack" by Germany and
6 Japan. I invite your attention to exhibits 771^{b.}
7 and 773A^{c.} which show that any country attacked by
8 Japan or Germany would be declared "the attacking
9 party." In the same document OSHIMA proceeds to
10 state: "Ribbentrop told me that Germany would like
11 to have a military alliance directed not only against
12 Russia, but also against the other countries which
13 might attack Germany and Japan, namely, America, France,
14 England, etc..." There is the following entry in the
15 diary of the Italian Foreign Minister Ciano under the
16 date of March 8, 1939:

17 "I see the Japanese Ambassador. He confirms
18 that Attolico wrote concerning the Japanese reply on
19 the Tripartite Alliance. Many reservations and the
20 intention of regarding the pact as exclusively anti-
21 Russian."^{d.}

22 In the telegram sent from Tokyo to Berlin on March
23 23, 1939, Ott gave information concerning the decision
24 reached by the Five Japanese Ministers conference with

25 H-135. a. Ex. 776A, T. 7891 c. T. 7877
b. T. 7874 d. Ex. 501, T. 6095

the Prime Minister presiding "to take up diplomatic negotiations with Germany for the purpose of concluding a military treaty directed against Russia."^{e.} Concerning the results of this stage of the negotiations OSHIMA gave the following testimony:

"The divergency of views between Japan and Germany led to further negotiations marking time, and practically the Pact was not concluded in 1939. This continued till the conclusion by Germany of a Pact of non-aggression with the Soviet Union on August 23, 1939, as a result of which further negotiations concerning the conclusion of the military alliance between Germany, Japan and Italy were discontinued."^{f.} As is known, the accused HIRANUMA, the then Prime Minister of Japan, resigned because he, as KIDO concludes, "could not help keenly feeling the responsibility because this hypothetical enemy, Soviet Russia, had concluded a treaty with Germany."^{g.} The accused OSHIMA and the accused SHIRATORI, the then Ambassador to Rome, likewise resigned in a demonstrative manner. The protest lodged by the Japanese Government with the German Government in connection with the conclusion by the latter of a non-aggression pact with the Soviet Union^{h.} confirms that the negotiations regard-

H-135. e. Ex. 780, T. 7909 g. Ex. 781, T. 7910
f. Ex. 776A, T. 7891 h. Ex. 782, T. 7911

1 ing the conclusion of the Tripartite Pact were direct-
2 ed against the USSR.

3 H-136. After becoming convinced that Germany
4 concluded the Pact with the Soviet Union with treacher-
5 ous purposes in view, the Japanese Government in the
6 summer of 1939 renewed negotiations with Germany and
7 Italy, and on September 27, 1940, the Tripartite Pact
8 was signed. Paragraph 5 of the Pact provided that:
9 "Japan, Germany and Italy shall confirm that the above
10 stated articles of this alliance have no effect what-
11 soever to the present existing political relation
12 between each or any one of the signatories with the
13 Soviet Union." ^{a.} As has been proved, paragraph 5 pur-
14 sued a special aim to conceal the real purport of the
15 Pact. Speaking of paragraph 5 of the Pact at the meet-
16 ing of the Privy Council Investigation Committee on
17 September 26, 1940, MATSUOKA stated as follows:

18 "Although there exists a non-aggression
19 treaty, Japan will aid Germany in the event of a
20 Soviet-German war, and Germany will assist Japan in
21 the event of a Russo-Japanese war. With regard to the
22 word 'existing', if you mean to ask if the present
23 status of the Soviet Union cannot be modified, I say
24 H-136. a. Ex. 43, T. 513
25

1 no; I mean that it will not be modified by the treaty
2 under consideration... Even though the Russo-Japanese
3 relation may be readjusted it will hardly last for
4 three years. After two years, it will be necessary to
5 reconsider the relations among Japan, Germany and
6 Russia." b.

7 From these words as well as from a number of other
8 documents it may be seen that paragraph 5 of the Pact
9 was intended for the purpose of concealing the real
10 purpose of the Pact, of camouflaging its being direct-
11 ed against the USSR. In the light of these undeniable
12 facts, the attempt of the defense to create their
13 slanderous version with regard to the attitude of the
14 Soviet Union to this much talked about Pact is absolute-
15 ly absurd.

16 H-137. On June 22, 1941, i. e., less than a
17 year after the conclusion of the Tripartite Pact, the
18 USSR was treacherously attacked by the bloc of aggres-
19 sors. It was a part of the common plan of conspiracy
20 between Hitlerite Germany, fascist Italy and imperial-
21 istic Japan against freedom-loving nations. Germany,
22 Italy and their satellites conducted military opera-
23 tions against the Soviet Union, while Japan actively
24 fulfilled her commitments arising out of the conspiracy

25 H-136. b. Ex. 552, T. 6350

1 against the USSR, but in another form with which I
2 shall deal in detail later on.

3 8. The Violation by Japan of the Neutrality
4 and Aggressive Actions Against the Soviet Union in the
5 Period After the German Attack Against the USSR After
6 the Conclusion of the Neutrality Pact.

7 H-138. We contend and prove that the Japan-
8 ese Government: (1) Knew that Germany was preparing an
9 attack against the USSR and promised to join Germany;
10 (2) Concluded the Neutrality Pact with the USSR with
11 treacherous aims in view; (3) Grossly violated the
12 Neutrality Pact in the period after the German attack
13 against the USSR and in its turn was preparing an
14 attack against the Soviet Union; and (4) Conducted
15 aggressive actions against the USSR in that period.

16 H-139. Ribbentrop during his conference with
17 OSHIMA, held on 23 February 1941, told the latter that
18 in the spring of 1941 Germany would have 240 divisions
19 and spoke about the prospects of the "German-Russian
20 conflict" which in his submission "would result in a
21 gigantic German victory and signify the end of the
22 Soviet regime."^a The document shows further that
23 OSHIMA fully approved of that plan. In March-April,
24 1941, the Japanese Foreign Minister MATSUOKA conducted
25 H-139. a. Ex. 769, T. 7867

in Berlin quite concrete negotiations with Hitler, and
 1 Ribbentrop about the preparation by Germany of an
 2 attack against the USSR and about the attitude of Japan.
 3 In his conference with MATSUOKA, held on March 27,
 4 1941, Ribbentrop made the following statement:

5 "The German armies in the East are available
 6 at any time. Should Russia one day take up an attitude
 7 which could be interpreted as a threat against Ger-
 8 many, the Fuehrer would dash Russia to pieces. One
 9 is positive in Germany that such a campaign against
 10 Russia would end in a complete victory for German
 11 arms and the absolute destruction of the Russian Army
 12 and the Russian state. The Fuehrer is convinced that
 13 in case of an advance against the Soviet Union a few
 14 months later a power (grossmacht) Russia would no
 15 longer exist." ^{b.}

16
 17 In his conference with MATSUOKA, held on the
 18 same day, i. e., March 27, 1941. Hitler confirmed it
 19 in the presence of OSHIMA, Ott and Ribbentrop. ^{c.} In
 20 his conference with MATSUOKA, on March 29, 1941,
 21 Ribbentrop once more spoke about the concentration
 22 of the German Army on the Eastern border and about
 23 the prospect of war against the USSR. ^{d.} Fascist Italy,
 24 the third participant of the Tripartite Pact, did not

25 H-139. b. Ex. 783, T. 7915 d. Ex. 789, T. 7939
 c. Ex. 790, T. 7943

1 remain indifferent in the matter of drawing up the
2 common plan and the selection of the USSR as the object
3 of aggression. This may be seen from MATSUOKA's con-
4 ference with Hitler held on April 4, 1941, when
5 MATSUOKA told Hitler about his negotiations with
6 Mussolini on that matter.^{e.} The documents say that
7 MATSUOKA promised the German Government that Japan
8 would join the war against the USSR. In the course of
9 the conference held on March 29, 1941, MATSUOKA said
10 in reply to Ribbentrop's statements about the prepara-
11 tion by Germany of an attack against the USSR: "...Japan
12 would always be a loyal ally who would devote herself
13 entirely, and not just in a lukewarm way, to the joint
14 effort."^{f.} Maybe that promise was of too general a
15 nature?

16 H-140. Now we shall pass over to the documents
17 containing more specific promises. In his telegram
18 of May 5, 1941, addressed to the German Ambassador in
19 Tokyo, Ribbentrop quoting MATSUOKA's words, said dur-
20 ing the conference held on March 28, 1941: "Should
21 Germany come to blows with the Soviet Union, no Jap-
22 anese Premier or Foreign Minister would ever be able
23 to keep Japan neutral. In this case, Japan would be
24 driven by the force of necessity to attack Russia at
25

H-139. e. Ex. 791, T. 7945
f. Ex. 789, T. 7939

1 the side of Germany. No Neutrality Pact could alter
2 any of this." ^{a.} This promise of MATSUOKA became with
3 him a kind of formula. As may be seen from Ott's
4 telegram to Berlin sent on May 6, 1941, MATSUOKA
5 made to him exactly the same statement. ^{b.} In his tele-
6 gram of May 20, 1941, OSHIMA advised MATSUOKA: "The
7 German government attached great importance to Foreign
8 Minister MATSUOKA's statement to Ott to the effect
9 that Japan would attack the USSR in case of a Russo-
10 German war." ^{c.} It cannot be denied that in these docu-
11 ments MATSUOKA's promise to join Germany in her war
12 against the USSR is of quite a specific character.

13 H-141. The Defense contends that MATSUOKA
14 was not aware of the preparation by Germany of an
15 attack against the USSR; gave no promise to support
16 Germany and concluded the Neutrality Pact with the
17 USSR without any secret purpose. To refute the con-
18 tentions of the Prosecution it is necessary to disprove
19 the documents. That is what the Defense tried to do.
20 But what was the result of this attempt?

21 H-142. The Defense tendered an affidavit of
22 Stahmer, former German Ambassador in Tokyo, who con-
23 tended that the conferences held by Hitler and Ribben-
24 trop were not recorded, but the records were made
25

H-140. a. Ex. 792, T. 7955 c. Ex. 1075, T. 9918
b. Ex. 1068, T. 9883

1 from their words or from the words of the interpreters:
2 "These minutes were, as being unofficial ... For inter-
3 nal use these records were only regarded as aide-memoire."^a
4 Stahmer, who was closely associated with Ribbentrop,
5 is an active fascist and the worst enemy of democracy.
6 Every word in his testimony on any matter was written
7 having in mind the justification of the actions of
8 the accused by all means, because in this justifica-
9 tion Stahmer sees the justification of Japan's aggres-
10 sive policy, therefore the justification to some ex-
11 tent of Germany's aggressive policy and, in the long
12 run, of Stahmer himself. Stahmer does not contend
13 that the conferences were deliberately recorded wrong-
14 ly. That would be too preposterous. He confines him-
15 self to casting reflections upon those records, tries
16 to instill distrust in them. However, this should be
17 of no success.

18 H-143. It is absurd to suppose that the Ger-
19 man Government for their own use wrongly recorded
20 the negotiations on most important state matters. On
21 the contrary, the restricted character of the records
22 only makes them most trustworthy. It is said these
23 records are not stenographic. We do not say the records
24 presented to the Tribunal are stenographic records of
25 the conferences MATSUOKA had with Ribbentrop and Hitler,
H-142. a. Ex. 2744, T. 24392.

1 but we do contend that these records give the subject
2 matter of the conferences correctly. The Defense also
3 tendered a telegram dated April 23, 1941, from one of
4 the officials of the German Ministry of Foreign
5 Affairs to the effect that the records of the confer-
6 ences MATSUOKA had with Hitler and Ribbentrop could
7 not be furnished because as a matter of principle that
8 could not be done and that during the conferences the
9 Minister Schmidt "took notes only of catchwords for
10 the purpose of translation."^{a.} It also does not follow
11 from this document that the records of the conferences
12 should be disbelieved; that they are wrong; and so on.
13 The unwillingness to provide a record of such a con-
14 ference may really have been based on the absence of
15 such a practice in diplomatic work at all and also on
16 the quite understandable apprehension as to the furn-
17 ishing of documents on such top secret matters. If
18 this has any bearing upon the probative value of the
19 records of the conferences it only shows their trust-
20 worthiness. Ribbentrop himself by no means considered
21 those records untrustworthy. For instance, in his
22 telegram to Tokyo on May 5, 1941, which was previous-
23 ly mentioned,^{b.} Ribbentrop gives the subject matter
24 of his conversation with MATSUOKA about the attitude
25

H-143. a. Ex. 2748, T. 24586.
b. Ex. 792, T. 7955

1 of Japan toward the forthcoming German-Soviet war.
2 It follows from that that the records of the confer-
3 ences were considered correct, and this specific
4 record MATSUOKA not only did not refute, but on the
5 contrary confirmed.^{c.} It must also be borne in mind
6 that a number of the records of MATSUOKA's conferences^{d.}
7 with Ribbentrop and Hitler held on different days
8 were presented to the Tribunal and in all those
9 records the question is dealt with in the same way
10 which entirely excludes even an unpremeditated error
11 in the records. The Defense are quite illogical when
12 they first try to prove that the records of the con-
13 ferences were incorrect and then, seeing that they
14 could achieve nothing in that way, create another ver-
15 sion, namely, that the recorded words of Hitler and
16 Ribbentrop were said by them only to disguise their
17 real intentions.
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H-143. c. Ex. 1068, T. 9883

d. Ex. 783, T. 7915; Ex. 789, T. 7939
Ex. 790, T. 7943; Ex. 791, T. 7945

1 H-144. The defense produced the witness NAGAI
2 who allegedly heard the Chief of the General Staff warn
3 MATSUOKA before his trip to Europe that he should not
4 make any assurances on behalf of the Army and that
5 MATSUOKA supposedly gave that promise.^{a.} But the prose-
6 cution do not contend that MATSUOKA made any assurances
7 "on behalf of the Army." He, in his capacity as Foreign
8 Minister, made assurances on behalf of the Japanese
9 government. That is more than sufficient. In KONOYE's
10 memoirs there is an indication that MATSUOKA, after his
11 return from the trip, said that Hitler and Ribbentrop:
12 "insisted that the root of European troubles could not
13 be removed unless a severe blow was dealt to Soviet
14 Russia . . . Mr. MATSUOKA made it clear that Japan could
15 not easily agree to a German war against Russia because
16 she would be immensely affected by such an eventuality."^{b.}
17 We do not contend that MATSUOKA "easily" agreed, but he
18 told Ribbentrop that if war between Germany and the
19 U.S.S.R. broke out, "In this case Japan would be driven
20 by the force of necessity to attack Russia at the side
21 of Germany."^{c.} One could not express it clearer.

22 H-145. In KONOYE's memoirs are quoted Ribben-
23 trop's words that he: "found it difficult to understand
24

25 (H-144. a. Ex. 2747, T. 24578.
b. Ex. 2735-A, T. 24289.
c. Ex. 792, T. 7955.)

1 Mr. MATSUOKA's real intentions in concluding such a
2 treaty with the very country with whom Germany would
3 fight in the near future as he (Ribbentrop) had explained
4 to Mr. MATSUOKA so plainly." ^{a.} This and previous ex-
5 cerpts only confirm that MATSUOKA knew that Germany was
6 preparing an attack against the U.S.S.R. As far as
7 Ribbentrop's attitude toward the pact between the U.S.S.R.
8 and Japan is concerned, it is in vain that the defense
9 are trying to make use of that document. The Japanese
10 Government could have and certainly did have their own
11 plans relating to certain issues of their foreign policy,
12 as is nearly always the case with all the conspirators
13 realizing the objectives of the common conspiracy, but
14 at the same time solving specific matters in their own
15 interests. However, in the interests of truth we must
16 say that the state of things was different from what
17 KONOYE said it was. The defense contradict themselves
18 when they present another document from which it may be
19 seen that on April 20, 1941, Hitler said: "Japan-Russian
20 pact has been concluded in agreement with Germany." ^{b.}

21 H-146. With regard to other excerpts from
22 ^{a.}
23 KONOYE'S memoirs, in which it is said that MATSUOKA in
24 his telegram of May 28, 1941, advised Ribbentrop, taking

25 (H-145. a. Ex. 2735-A, T. 24289.

b. Ex. 2750, T. 24612.

H-146. a. Ex. 2735, T. 24286.)

1 into consideration the external and internal position of
2 Japan, to avoid the armed conflict with the U.S.S.R.,
3 the President of the Tribunal said: "What Prince
4 KONOYE says as to the contents of the document will not
5 be accepted as proof of those contents." ^{b.} Therefore,
6 the prosecution does not consider it necessary to en-
7 large about a document the contents of which have not
8 been ascertained. If it were proved that the contents
9 of the telegram were given correctly in KONOYE's memoirs,
10 we in our turn would have proved that MATSUOKA was
11 guided not by purposes of peacemaking, but by the ex-
12 pectation of a moment more favorable for Japan to attack
13 the U.S.S.R.

14 H-147. On June 22, 1941, Germany attacked the
15 U.S.S.R. This was an act of aggression in the most un-
16 disguised form against the Soviet Union -- a fact
17 recognized in the judgment of the Nuernberg Tribunal as
18 absolutely indisputable. Soon after the German attack
19 against the Soviet Union, MATSUOKA in reply to the
20 question he was asked by the U.S.S.R. Ambassador
21 Smetanin as to whether Japan would observe the Neutrality
22 Pact "emphasized that the Tri-Partite Pact was the basis
23 of the foreign policy of Japan and if the present war
24 and the neutrality pact happened to be at variance with
25 (H-146. b. T. 24308.)

1 the basis and with the Tri-Partite Pact, the neutrality
2 pact will not continue in force." ^{a.} These words of
3 MATSUOKA are borne out in Ott's telegram to Berlin on
4 July 15, 1941. ^{b.} In his telegram to Berlin on June 22,
5 1941, Ott advised that MATSUOKA "... personally was of
6 the same opinion as before that in the long run Japan
7 could not remain neutral in this conflict." ^{c.} In his
8 telegram to Berlin on July 3, 1941, Ott advised that the
9 Japanese Government made a declaration of their intention
10 to observe the Neutrality Pact with the U.S.S.R., but,
11 as Ott wrote: "MATSUOKA said the reason for the formu-
12 lation of the Japanese statement to the Soviet Amba-
13 sador was the necessity to deceive the Russians or at
14 least to keep them in a state of uncertainty, owing to
15 the armaments still being incomplete. At present
16 Smetanin was not aware of speedy preparations being made
17 against the Soviet Union as is hinted at in the govern-
18 ment resolution transmitted to us." ^{d.}

19 H-148. I deem it necessary to sum up to a
20 certain extent the activity connected with the name of
21 MATSUOKA. The documents and facts show that MATSUOKA
22 knew about the German preparation for an attack against
23 the U.S.S.R.; he promised that Japan would participate
24

25 (H-147. a. Ex. 793, T. 7956.
b. Ex. 794, T. 7957.
c. Ex. 795-A, T. 7958.
d. Ex. 796, T. 7961.)

1 in that war against the U.S.S.R.; he concluded the
2 Neutrality Pact with the U.S.S.R. with this treacherous
3 aim in view; after the German attack against the
4 U.S.S.R., he insisted on Japan entering the war against
5 the U.S.S.R. and rendering all sorts of assistance to
6 Germany. But do all these facts concern only MATSUOKA
7 and does the question of the responsibility for them
8 cease to exist after MATSUOKA's death? It is not in
9 vain that some of the accused and their witnesses are so
10 willingly placing the responsibility on MATSUOKA's
11 shoulders for many of the actions charged in the Indict-
12 ment. It seems there is no necessity to enlarge in
13 detail upon the common truth that when a Minister for
14 Foreign Affairs conducts negotiations he represents the
15 government of his country.

16 H-149. Right after the conclusion of the
17 Neutrality Pact at the end of April, 1941, the Kwantung
18 Army Chief of Staff delivered a speech at the secret
19 conference of formation commanders in which he charac-
20 terized the Pact as "a diplomatic measure planned. . .
21 for the purpose of strengthening the Tripartite Alliance."
22 He also called upon the army not to "permit the slowing
23 down in its preparations for military operations"
24 against the Soviet Union so that "the effectiveness of
25 the Pact will be promoted."^a One could hardly be more

(H-149. a. Ex. 3701.)

clear and cynical.

1 H-150. The basis of Japan's policy vis-a-vis
2 the Soviet Union after the German attack against the
3 U.S.S.R. -- in the most critical period in the life of
4 the Soviet state -- was a secret decision of the Im-
5 perial Conference held on July 2, 1941. This decision
6 was as follows: "Though the spirit of the Tripartite
7 axis will form the keynote of our attitude toward the
8 German-Soviet war, we shall not intervene for a while,
9 but take voluntary measures by secretly preparing arms
10 against the Soviet Union. Meanwhile, diplomatic negoti-
11 ations will be continued with detailed precautions, and
12 should the conditions of the German-Soviet war progress
13 favorable to Japan we shall execute arms to solve the
14 northern problems, thereby securing stability in the
15 Northern regions." ^{a.} As I shall try to prove further,
16 the German government agreed as a matter of principle
17 to the role assumed by Japan in the matter of the
18 realization of the common plan of conspiracy, taking into
19 consideration the military operations conducted by Japan
20 in the south. The defense are making an attempt to
21 state that the decision of July 2, 1941, was not carried
22 into effect and was later on replaced by the decision of
23 the conference held on September 6, 1941. Defense
24
25 (H-150. a. Ex. 779, T. 7904.)

1 counsel Blakeney quoted the latter decision in the
2 following way: "As to Japan's attitude toward Soviet
3 Russia, Japan will not take the initiative for military
4 action as long as the Soviet Union will respect the
5 Russo-Japanese Neutrality Pact, and will not threaten
6 both Japan and Manchukuo." ^{b.} The text quoted by defense
7 counsel does not correspond to the original text. We
8 leave it to the Tribunal to decide whether an error
9 took place or the text was quoted in bad faith. The
10 original text is as follows: "In case of an interro-
11 gation as to Japan's attitude toward Soviet Russia, it
12 will be reported that Japan will not have the initiative
13 for military action . . . etc." ^{c.} There is of course a
14 sufficiently important difference between the real in-
15 tentions not to start the war and the intention to give
16 a reply as said above. To whom was the reply to be
17 given? If the Soviet Union is meant, then such a reply
18 was also given before, but, as MATSUOKA explained, "in
19 order to deceive the Russians." ^{d.} Quite opposite actual
20 deeds could be hidden behind any "reply" of the Japanese
21 Government, to say nothing of a very broad interpre-
22 tation of the word "menace" given in such cases by the
23 Japanese leaders who considered that the Japanese line
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25 (H-150. b. T. 23467.
c. Ex. 779, T. 7904.
d. Ex. 796, T. 7961.)

1 of defense lay near Lake Baikal. The decision of the
2 conference held on July 2, 1941, was not revoked as
3 regards its being carried into effect, i.e., the actual
4 line of conduct of the Japanese ruling clique after the
5 German attack against the U.S.S.R.

6 H-151. We shall pass next to the evidence of
7 impartial documents and competent witnesses. In his
8 telegram sent to Berlin on July 1, 1941, the German
9 Ambassador to Italy Mackensen quoted the words of the
10 Japanese Ambassador in Italy: "Japan has the intention
11 to actively advance (vorgehen) against Russia on its
12 part, but needs a few more weeks."^{a.} The telegram sent
13 to Berlin on July 3, 1941, by the German Ambassador in
14 Japan said: ". . . Japan is preparing for all possible
15 eventualities as regards the U.S.S.R. in order to join
16 forces with Germany. Japan is keenly watching develop-
17 ments of conditions in Eastern Siberia in particular,
18 determined as she is to destroy the communist system
19 established here. . . the augmentation of military pre-
20 parations, among other things, with an eye to realizing
21 this object. . . is steadfastly kept in the mind of the
22 Japanese Government."^{b.} In Ott's telegram to Berlin
23 dated July 4, 1941, he said: "Japanese Army is zealously
24 preparing and under emphatic secrecy. . . 2) (A surprise
25 (H-151. a. Ex. 797, T. 7962.
b. Ex. 636, T. 7009.)

though not rush - commencement of hostilities against
1 Russia, with the seizure of the coastal province as the
2 first goal)."^{c.} Ott's telegram to Berlin dated July 12,
3 1941, mentions a whole number of concrete measures taken
4 by Japan for the preparation of war against the U.S.S.R.,
5 including new appointments of officers, the calling up
6 of reservists and drivers, the confiscation of tractors
7 in Manchuria, the calling up of those who can speak
8 Russian, and the replenishment of the Kwantung Army,
9 etc.^{d.} In his telegram of July 25, 1941, Ott advised
10 that the reservists were being called up on a large
11 scale and that about 900,000 men were to be called up
12 before the middle of August; that horses and motor cars
13 were being mobilized; that preparations were being made
14 in Manchuria for creating accommodation facilities for
15 the troops arriving by rail, that supplies for the troops
16 were being brought; that new military units were being
17 formed in Manchuria and Korea. And further: "But it is
18 probable that it will not be limited only to an attack
19 on the Vladivostok area and in a northerly direction,
20 but will also simultaneously start in the direction of
21 Lake Baikal, along the Manchurian Railroad, through
22 Chita and from the area of Kalgan through Outer Mongolia.
23 Time of start (of operations) unknown. One fact which
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25 (H-151. c. Ex. 638, T. 7030.
d. Ex. 799, T. 7966.)

1 might bear this out is that, in my opinion, the deploy-
2 ment of troops will take until about the middle of
3 August, and that General OKAMOTO several times mentioned
4 in his conversations that Japan would only start when
5 the German units had reached the Volga." ^{c.}
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(H-151. e, Ex. 830, T. 8071.)

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H-152. In postponing the time of attack on
the USSR until a more favorable situation, the
Japanese leaders were afraid of missing an opportune
moment for the realization of the aggressive plans
against the USSR. The telegram from Tokyo to the
Japanese Ambassador to Washington dated July 31, 1941,
says as follows: "Needless to say, the Russo-German
war has given us an excellent opportunity to settle
the northern question, and it is a fact that we are
proceeding with our preparations to take advantage of
this occasion. . . . If the Russo-German war proceeds
too swiftly, our Empire would inevitably not have
time to take any effective symmetrical action."^a.
In the telegram from Tokyo, dated August 1, 1941,
information is again given about the progress of the
mobilization in Japan: "Which is being carried through
with the intention of destroying the Russian military
forces in the Far East."^b. I invite the attention of
the Tribunal to the date of this telegram which is
August 1, 1941, two weeks after the change of the
Government when MATSUOKA was no longer Minister for
Foreign Affairs. This is one more proof that the
preparations for war against the USSR were not

H-152.

- a. Ex. 808, T. 7987.
b. Ex. 800, T. 7967.

1 connected only with MATSUOKA, but also were a pro-
2 gram of the Japanese military clique, the leading
3 group of which continued to remain in power during
4 any change of the cabinet. That program was clear:
5 to actively prepare for an attack against the USSR
6 awaiting a favorable moment under the guise of the
7 Neutrality Pact.

8 H-153. When a statement was made to the
9 USSR Ambassador in August 1941 that Japan intended
10 to continue peaceful relations with the USSR provided
11 the Soviet Union would adhere to the loyal policy,^{a.}
12 the German Ambassador Ott began to worry: "... if
13 the Soviets do not have the impression that Japan will
14 not take part in the German-Soviet War," and in reply
15 received the assurance that such an agreement with
16 the Soviet Union: "is the very best means of taking
17 the first steps toward carrying out future plans con-
18 cerning the Soviet which will be undertaken together
19 with the German government. This is entirely in
20 harmony with the spirit and objectives of the Tri-
21 partite Treaty. . ."^{b.} It must be emphasized that in
22 this case as in many other cases when Japanese hostile
23 actions against the Soviet Union were planned, they
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25 H-153.

a. Ex. 803A, T. 7977.

b. Ex. 804, T. 7980.

1 were based on the Tripartite Pact, the pact which was
2 concluded, as the defense tried to prove, for the
3 purpose of establishing "friendly" relations with
4 the Soviet Union. We have quoted and are still
5 going to quote a whole series of telegrams of the
6 German Ambassador on the matter of the active
7 preparation of the Japanese government for war
8 against the USSR in order to make it clear that it
9 cannot be said that these telegrams are of a casual
10 nature. This was systematic official information
11 based on business connections and on the specific
12 knowledge of the situation. However, not confining
13 ourselves to this, we shall reply upon very weighty
14 evidence from Japanese sources that the Japanese
15 government was actively preparing an attack against
16 the USSR.

17 H-154. To realize the decision of the
18 Imperial Conference held on July 2, 1941: "to resort
19 to arms for the solution of northern problems,"^a i.e.,
20 for the seizure of Soviet territories, there was
21 worked out a special secret plan of preparation for
22 war against the USSR. That plan had a code name
23 "Kantokuen" (special maneuvers). This plan was
24 H-154.

25 a. Ex. 779, T. 7904.

1 destroyed by the Japanese authorities along with
2 many other materials exposing the aggressors.

3 However, the gist of the plan and the measures carried
4 out in connection with it are proved quite conclusively
5 by other documents and by the testimony of competent
6 witnesses. The witness SEJIMA, Ruizo, officer
7 of the Japanese General Staff, testified that in the
8 summer of 1941 mobilization was secretly carried out
9 in Japan and up to 300,000 men were sent to reinforce
10 the Kwantung Army. The witness also mentioned other
11 measures to reinforce the Kwantung Army carried out
12 in the summer of 1941 right after the German attack
13 against the Soviet Union -- in particular, bringing
14 the Kwantung Army divisions up to wartime establishments.
15 ^{b.} The witness MATSUURA, Kusuo, who was a
16 member of the Kwantung Army Headquarters, confirmed
17 that the operations of the Japanese Army in Inner
18 Mongolia, with a break-through to Zabaikalie and the
19 operations of the Kwantung Army in the direction of
20 Primorie and Zabaikalie, were planned.
21 ^{c.}

22 H-155. The witness TAKEBE, Rokuzo, Chief of
23 the Bureau of General Affairs of the Government of
24 Manchukuo, testified about the measures carried out

25 H-154.

b. Ex. 834, T. 8094.

c. Ex. 833, T. 8092.

1 by the government of Manchukuo in accordance with
2 the Kantokuen plan. These measures were: the
3 mobilization of workers for the construction of
4 military objectives, the provision of troops newly
5 arrived in Manchuria with foodstuffs and other
6 commodities, etc. All instructions regarding these
7 measures the witness received from UMEZU, the
8 Commanding General of the Kwantung Army. In the
9 summer of 1941, TAKEBE visited War Minister TOJO in
10 Tokyo who confirmed to him the necessity of the full
11 effectuation by the Manchurian government of the
12 measures of supplying the Kwantung Army in accord-
13 ance with the Kantokuen plan.^a Pointing out that
14 the effectuation of the Kantokuen plan commenced
15 right after the German attack against the USSR and
16 led to the considerable growth of the might of the
17 Kwantung Army, the witness TAKEBE testified: "When
18 I learned of the Kantokuen plan I was, as a matter of
19 fact, very much astonished and from my own intuition
20 had entertained misgivings that an attack on the USSR
21 was imminent or that an outbreak of war between Japan
22 and the USSR was close at hand. Even among the staff
23 officers of the Kwantung Army there was a feeling that
24 H-155.
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a. Ex. 3371, T. 31834.

1 a war between the USSR and Japan was close at hand."^{b.}

2 In the directive of September 6, 1941, UMEZU proposed
3 the additional training of Russian interpreters for
4 the Kwantung Army in accordance with the Kantokuen
5 Plan.^{c.}

6 H-156. As to other measures carried out
7 under the Kantokuen Plan, I shall confine myself
8 for the sake of saving time to referring to the docu-
9 ments admitted by the Tribunal as exhibits 838,^{a.}
10 686A,^{b.} 835.^{c.} It must also be taken into consider-
11 ation by the Tribunal that the telegrams of the
12 well-informed German Ambassador in Tokyo, Ott, and
13 Military Attache Kretschmer^{d.} bear witness to the
14 Kantokuen Plan and the measures carried out in accord-
15 ance with it. Under the Kantokuen Plan the numerical
16 strength of the Kwantung Army more than doubled and
17 reached 1,000,000 officers and men by January, 1942.
18 The number of tanks doubled by that time and the number
19 of aircraft even trebled as compared to 1937.^{e.} The

21 H-155.

22 b. T. 31863.

c. Ex. 832, T. 8081.

23 H-156.

24 a. T. 8164.

b. T. 7416.

25 c. T. 8127.

d. Ex. 636, T. 7009; Ex. 638, T. 7029; Ex. 799,
T. 7966; Ex. 800, T. 7967; Ex. 830, T. 8071.

e. Ex. 706, T. 7531.

1 witness, Lieutenant-General MURAKAMI, estimated the
2 total strength of the Japanese troops opposing the
3 Soviet Army in the Far East as about 1,000,000
4 officers and men.^{f.} Thus, a Japanese Army at least
5 one million strong was stationed near the Soviet
6 border after the summer of 1941 fully prepared for
7 the invasion.

8 H-157. However, the resistance put up by
9 the Soviet Army to the German troops upset the plans
10 of the aggressors for the summer of 1941. The
11 Japanese government began to worry about the future
12 of the conspiracy and made demands to Germany. That
13 is what OSHIMA testified: "Approximately at the end
14 of July or at the beginning of August, 1941, I learned
15 about the slowing up of the pace of the advance of
16 the German Army. Moscow and Leningrad were not taken
17 according to the German plan. I asked information
18 from Ribbentrop on that subject. Ribbentrop invited
19 Keitel to explain the matter. Keitel told me that the
20 slowing up of the advance of the German Army was caused
21 by the excessive length of communications and rear
22 units lagging behind, and that that was the reason why
23 the pace of the advance of the German Army was
24
25 H-156.
f. T. 32064.

1 approximately three weeks behind plan."^a. In his
2 telegram to Berlin dated September 4, 1941, Ott
3 advised: "In view of the resistance put up by the
4 Russian Army against an army such as the German, the
5 Japanese General Staff does not believe itself
6 capable of achieving decisive success against Russia
7 before winter sets in. . . The Imperial headquarters
8 in the last days came to the decision to postpone
9 action against the Soviet Union."^b. I emphasize the
10 idea to postpone for sometime action against the
11 Soviet Union. The three weeks promised by Keitel
12 and even more time passed, but the situation remained
13 unchanged. In his telegram to Berlin dated October 4,
14 1941, Ott advises: "Japan's waging of a war against
15 the Far Eastern Army, still considered as being in
16 fighting trim, is not feasible before next spring. . .
17 The tenacity displayed by the Soviet Union against
18 Germany indicates that not even by a Japanese attack
19 in August or September could the route via Siberia be
20 opened up this year."^c. In the telegram to Berlin
21 dated November 17, 1941, it is said that it is neces-
22 sary to postpone until spring Japanese military
23 operations against the USSR.^d

25 H-157.

a. Ex. 776A, T. 7891. c. Ex. 788A, T. 7933.
b. Ex. 801A, T. 7971. d. Ex. 655, T. 7117.

1 H-158. The choice of an opportune time for
2 an attack against the USSR was a most important
3 element of the strategic plan: to the expectation
4 of the most favorable situation for Japan in the
5 German-Soviet war was added first a desire to seize
6 sources of raw materials in the south and then to
7 attack the USSR. Such an approach was very important
8 when the German plans of blitz warfare against the
9 USSR fell through. The following is said in the
10 telegram from Tokyo to Berlin dated September 30,
11 1941: "Say that by our present moves southward we
12 do not mean to relax our pressure against the Soviet
13 . . . right now, it is to our advantage to stress
14 the south and for the time being we would prefer to
15 refrain from any direct moves in the north. . . This
16 message is important from a strategic point of view
17 and must under all circumstances be held in the most
18 absolute secrecy."^a The explanation of the then
19 situation of Japan is also given in a telegram from
20 Tokyo to Berlin dated December 6, 1941: ". . . we
21 would like to avoid bringing about any situation
22 likely to result in an armed clash with Soviet Russia
23 until strategic circumstances permit it. . ."^b

25 H-158.

a. Ex. 802, T. 7974.

b. Ex. 805, T. 7981.

1 However, the military preparations were by no means
2 discontinued.

3 H-159. The Kwantung Army Chief of Staff,
4 in his speech delivered at the conference of forma-
5 tion commanders held in December 1941, specially
6 raised the issue of the completion of the continuously
7 conducted preparations for military operations against
8 the USSR and of the careful study of the military
9 situation of the USSR and Mongolia.^a In his telegram
10 to Berlin dated January 29, 1942, Ott reports:

11 "According to very confidential information, however,
12 military preparations against Russia are under way
13 in Manchuria. Influential circles here are of the
14 opinion that after the conquest of Port Darwin Japan
15 must turn against Russia and seize Vladivostok, the
16 coastal province and north Sakhalin in order definite-
17 ly to make itself also secure in the north."^b I
18 invite the attention of the Court to the fact that
19 four months and twenty-three days had already passed
20 by that time after the Conference held on September
21 6, 1941. Therefore, it is seen from the facts that
22 the decision of July 2, 1941, was carried into effect
23 to "take voluntary measures by secretly preparing arms
24 to
25 H-159.

a. Ex. 3700.

b. Ex. 806, T. 7983.

against the Soviet Union."^c.

1 H-160. The aggressive war against the
2 Soviet Union was contemplated in such concrete
3 terms that the plans of administration of Soviet
4 territories to be occupied were being mapped out in
5 the course of 1941-1943 in specially established
6 commissions of the Japanese General Staff and the
7 Kwantung Army Headquarters. Witness TAKEBE, Rokuzo,
8 and MATSUURA, Kusuo, testified that in 1941-1943
9 under UMEZU, the commanding general of the Kwantung
10 Army, the 5th section was functioning in the Kwantung
11 Army Headquarters. This section studied the occupa-
12 tion regime for the Soviet territories, and into
13 that work were drawn specialists from the Department
14 of General Affairs of Manchukuo.^a Defense witness
15 IKEDA during his cross-examination, admitted that
16 from July to September 1941 he was a member of a
17 group of officers engaged in the General Staff in the
18 study of the occupation regime on Soviet territories
19 and that later on he, with the rank of Major-General,
20 was Chief of the section of the Kwantung Army Head-
21 quarters which also studied the regime for the Soviet
22 H-159.

23 c. Ex. 799, T. 7966.

24 H-160.

25 a. T. 31840, 31933.

territory to be occupied.^{b.} The testimony of
prosecution witnesses TAKEBE and MATSUURA and the
evidence of the defense's own witness IKEDA as to the
study of the occupation regime for Soviet territories,
the defense attempted to meet with the testimony of
OGOSHI, Keiji, former General Staff officer and the
Kwantung Army Staff officer and now defense counsel
at this trial. However, this witness too began with
admitting that one of his duties was the study of the
problem of the occupation regime for Soviet terri-
tories.^{c.} Further he stated that a plan of military
administration in occupied areas formulated by the
Kwantung Army Staff and sent to the Army General Staff
included the following parts: administration; main-
tenance of peace and order; organization of industries;
circulation of currency; communication; and transporta-
tion; and that he and IKEDA were sent in 1942 to the
South Seas area for the study of the occupation
regime.^{d.} But remembering that he is a defense
counsel at this trial OGOSHI began to distort the
facts and went so far as to say such nonsense as that
the Kwantung Army Headquarters allegedly studied the

H-160.

- b. T. 36946.
- c. T. 37138.
- d. T. 37149.

1 occupation regime for those areas of Manchuria which
2 could be occupied by the Soviet troops. In his
3 further testimony defense counsel OGOSHI started
4 accusing IKEDA, his former chief and now also defense
5 counsel at this trial, with having made "quite a
6 good deal of inaccuracies" in his testimony.^e Thus,
7 quarrelling in this way before the Tribunal, two
8 defense counsel did their best to get the accused,
9 their former chiefs, out of trouble.

10 H-161. In 1942 the Japanese General Staff
11 worked out a new plan of offensive warfare against
12 the USSR which remained unchanged till spring 1944.
13 The witness SEJIMA, Ruizo, General Staff officer,
14 testified about that plan: "Like all the previous
15 operational plans, this plan for 1942 (Showa 17) was
16 an offensive plan and the operation was scheduled to
17 commence with a surprise attack. According to the
18 above plan, about thirty divisions were scheduled to
19 be concentrated in Manchuria. . . . The first front
20 which was to take the offensive against Voroshilov
21 consisted of the 2d, 3d, 5th, 20th armies. The forces
22 of the four armies were to advance in parallel so that
23 they could fight a decisive battle in the vicinity of
24 H-160.
25 e. T. 37154.

1 Voroshilov. The second front consisted of the 4th
2 and the 8th armies and its object was to take the
3 offensive against Swobodnaya and Kuibyshevka dis-
4 tricts to annihilate the Russian forces in those
5 areas and cut the railway."^a The witness Major-
6 General MATSUMURA, Tomokatsu, former Vice-Chief of
7 Staff of the Kwantung Army, testified about the
8 directives of the General Staff as to the realiza-
9 tion of the general plan: "The directives of the
10 Army General Staff instructed the Kwantung Army
11 Headquarters to form an operation's plan against
12 Soviet Russia with the occupation of the Maritime
13 Province of Soviet Russia and the destruction of the
14 air bases in the Maritime Province as the general
15 objectives, and also to focus the principal attack
16 upon Voroshilov. It was also written in the directives
17 that the Kwantung Army should make preparations for
18 further operations after occupation of the Maritime
19 Provinces."^b The same witness testified about the
20 plan for 1942 worked out by the Kwantung Army and
21 signed personally by UMEZU.^c From the general objec-
22 tives of the Kwantung Army, distribution of forces
23

24 H-161.

- 25 a. Ex. 834, T. 8094.
b. Ex. 836, T. 8139.
c. T. 8143.

1 and specific missions of armies and area armies, it
2 may be seen that despite the Pacific war, Japan in
3 1942 did not diminish but, on the contrary, increased
4 its armed forces for a surprise attack against the
5 USSR.^d I invite the attention of the Tribunal to
6 the testimony of witnesses MURAKAMI, Keisaku, MATSUURA,
7 Kusuo, KITA, Seichi, and KUSABA, Tatsumi, who also
8 testified in detail about the contents of the plan
9 for an attack against the Soviet Union in 1942-1943
10 from the Manchurian military base.^e

11 H-162. In a situation of such readiness
12 for an attack -- if we speak of the military aspect
13 of the matter -- only a command should have been
14 given. However, the situation which the Japanese
15 government expected would change continued to remain
16 obviously unfavorable also in 1942. Germany took
17 into consideration the position of Japan, which in
18 conformity with the common plan of conspiracy waged
19 war in the South Seas, and therefore Germany insisted
20 on the one hand on the speediest entry of Japan into
21 the war against the USSR and on the other hand advised
22 her to count on a war with the least risk. This,
23 therefore, was the division of labor between the
24
25 H-161.

d. Ex. 836, T. 8139.

e. Ex. 722, T. 7575; Ex. 833, T. 8092;
Ex. 837, T. 8160; Ex. 838, T. 8164.

1 conspirators. It is seen from Ribbentrop's telegram
2 to Tokyo dated March 26, 1942, that OSHIMA was told
3 by him in the course of their conference: "Naturally
4 we did not expect anything of Japan which would over-
5 step its power, for Japan's strength is also ours."^a.
6 I emphasize Ribbentrop's last words: "Japan's
7 strength is also ours," i.e., the common might of
8 Germany and other allies party to the Tripartite Pact.
9 In his telegram to Tokyo of May 15, 1942, Ribbentrop
10 expressed the wish that Japan "would arrive at a
11 decision to attack Vladivostok at the very earliest
12 However, this is all based on the premise
13 that Japan is sufficiently strong for an operation
14 of this nature. . . . If Japan lacks the necessary
15 strength to successfully undertake such an operation,
16 then it would naturally be better that she maintain
17 neutral relations with Soviet Russia. . . . In this
18 respect, Japan must undertake the offensive in some
19 other direction, as for example, India or Australia,
20 in order to contribute effectively to the joint con-
21 duct of the war."^b. I call the attention of the
22 Tribunal to the clear-cut and definite terms in which
23 this document speaks about the joint conduct of the
24 H-162.

a. Ex. 3819, T. 37944.

b. Ex. 807, T. 7984.

1 war on a world scale by the signatories of the Tri-
2 partite Pact and also that an attack against the
3 USSR or an offensive in other directions were con-
4 sidered separate stages of the "common plan" of war-
5 fare. I quote further: "In summing up, the following
6 is to be said from the German standpoint, a sudden
7 and successful attack against Soviet-Russia might
8 prove a boon for the further conduct of the war to
9 the Tripartite Powers, but this should only be under-
10 taken if success can be assured."^c.

11 H-163. In the summer of 1942, TOJO visited
12 Ott, the German Ambassador in Tokyo, and in the
13 presence of the witness, Lieutenant-Colonel Peters-
14 dorf, Assistant German military attache, discussed
15 with him the matters connected with the coordination
16 of military operations, and in touching upon the
17 relations with the Soviet Union said that: "Japan
18 was a mortal enemy of Russia and that Vladivostock was
19 a permanent threat to Japan from the flank and that in
20 the course of that war there was an opportunity of
21 removing that danger. He said that it was not so
22 difficult to do that as there was an excellent
23
24
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H-162.

c. Ex. 807, T. 7984.

1 Kwantung Army which included the best troops."a. TOJO
2 also made it understood that it was not enough to take
3 Vladivostok and Blagovestchensk, but that it was nec-
4 essary to extend the sphere of Japanese influence up
5 to Lake Baikal.

6 H-164. In his conversation with Ribbentrop
7 on July 30, 1942, OSHIMA stated that he had communi-
8 cated, for the consideration of the Japanese govern-
9 ment, the question of whether Japan should take part
10 in the war against the Soviet Union, adding his own
11 point of view that it was necessary to carry out "an
12 early intervention against Russia." Further, he
13 stated that the reply received by him was that the
14 Japanese Government, taking into consideration that
15 "action by Japan against the Soviet Union would bring
16 about too great a dispersion of Japan's strength,"
17 planned, under the existing circumstances, to confine
18 themselves to the military operations in the south
19 and in China. OSHIMA added that he was in favor of
20 immediate actions of Japan against the USSR and that
21 the above-stated reply was not a final one and that
22 "perhaps an action against Russia might yet be possible
23 before October, or, if not, probably not before next
24

25 H-163.

a. Ex. 3858, T. 38423.

1 spring."^a. The year 1943 also brought no changes
2 desired by Germany and Japan. In his conference with
3 Ribbentrop held on March 6, 1943, OSHIMA said that
4 under present conditions the Japanese Government
5 "are rather of the conviction that it is in the
6 common interest, not to start the war against Russia
7 now. . . what decided the issue for Japan was whether
8 she had sufficient forces and whether her armament
9 capacity was sufficient in order to attack and defeat
10 the Russians. . . for a long time Japan had the inten-
11 tion of turning against Russia. But for the time
12 being she evidently did not feel strong enough to do
13 so. . . Both an advance to the South, and at the
14 same time to the north was impossible for Japan. . .
15 In any case one did not have enough troops in order
16 to be able to attack Russia with the firm prospect
17 in an early victory."^b. However, the year 1944, to
18 say nothing of 1945, was still more unfavorable for
19 an attack against the USSR from the point of view of
20 the situation expected by the Japanese Government.
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23
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25 H-164.

a. Ex. 3822A, T. 37963.

b. Ex. 812A, T. 8014.

1 H-165. The defeat of Hitlerite Germany and
2 then of Japan in 1945 put an end to the conspiracy of
3 the aggressors. The attack contemplated by Japan did
4 not materialize. The prosecution consider it suffic-
5 iently proved that the attack did not materialize
6 because the Japanese government, actively preparing
7 for an attack, timed it for the most favorable moment
8 in the German war against the U.S.S.R. But because
9 the troops of the Anglo-Soviet-American coalition
10 defeated Hitlerite Germany, and the victorious Soviet
11 Army hoisted the banner of victory over Berlin, that
12 moment did not arrive.

13 H-166. The defense say that Japan was prepar-
14 ing no attack against the U.S.S.R. How is this conten-
15 tion substantiated? It is first of all substantiated
16 by saying that Japan did not launch the attack. If
17 Japan did not attack, it means Japan was not preparing
18 for an attack. This logic is very simple, but quite
19 unconvincing. With what defense documents have we to
20 deal? Ribbentrop testified that he tried to draw
21 Japan into the war with Russia, but came to the
22 conclusion that Japan tried to avoid having a conflict
23 with the U.S.S.R.^a Similar testimony given by
24

25 H-166.

a. Ex. 2462, T. 20308.

1 Ribbentrop before the Nuernberg Tribunal is contained
2 in another document.^b It is true that Ribbentrop
3 testified like that, but he did it when he was brought
4 to justice by the International Military Tribunal as a
5 major German war criminal, and it was quite natural
6 that he tried to shield his coparticipants in the
7 conspiracy against peace. However, the numerous
8 documents which we offered to the Tribunal and which
9 were drawn up when Ribbentrop was not a defendant but
10 Foreign Minister of Germany, not suspecting that the
11 documents would be examined by the International
12 Military Tribunal, proved beyond any doubt that
13 Ribbentrop had the consent of the Japanese government
14 to enter into the war against the U.S.S.R. and fully
15 relied on that. The only point was to choose time
16 for the Japanese attack against the U.S.S.R. And if
17 that agreement was not realized, it occurred due to
18 the circumstances beyond the control of Hitlerite
19 Germany and imperialist Japan.
20

21 H-167. The defense cannot refute these
22 documents. But other defense documents are not more
23 convincing. Thus, in an excerpt from KIDO's diary
24 are given words allegedly said by TOJO: "The Army's
25 policy dealing with the German-Soviet war is that

H.166. b. Ex. 2692-A, T. 23557.

1 the attitude of the Kwantung Army towards that war
2 should be calm and prudent."^a There is nothing def-
3 inite in these words and at any rate they do not
4 disprove the fact that the Kwantung Army was preparing
5 for war against the U.S.S.R. Generally speaking, the
6 defense are trying to show that the actions of Japan
7 amounted only to defensive measures. However, as is
8 known, Japanese militarists distorted the term "defense",
9 interpreting it in a very peculiar way. When TAKEBE,
10 one of the Japanese witnesses, was asked about the
11 term "defense" he said: "The word 'defense' can be
12 said to have a very broad meaning, and for example,
13 the occupation by Japan of Manchuria was also called
14 defense."^b

15 H-168. This peculiar understanding of
16 defense camouflaged any aggression on the part of
17 Japan. This understanding makes clear the expressions
18 used by the Japanese militarists -- "defense in the
19 Baikal area", "defense on the Philippines". As is
20 known, the Japanese concept of "defense" vis-a-vis
21 the U.S.S.R. in 1941-1942 included the seizure of

22 H-167.

23 a. Ex. 1098, T. 10036.

24 b. T. 31920.

Soviet territories and the study of occupation regimes
on Soviet territories from the Maritime Province to
Baikal. The witness KASAHARA testified that the
Kwantung Army had an instruction to avoid border
incidents with the U.S.S.R. and to intensify the
preparation for defensive operations in expectation of
an attack on the part of the Soviet Army. Not being
able to deny that the 1942 plan included offensive
operations vis-a-vis the U.S.S.R., KASAHARA tried to
find some other way out and testified that: "....
this plan was an offensive unavoidable for self-defense."^a
The testimony of the witness TANABE^b is identical.
Former Lt.-General TANAKA, Shinichi, in his long-
winded testimony and in a categorical tone tries
to prove that Japan could not even think of attacking
the U.S.S.R.^c The testimony of the witness TANAKA,
Shinichi, deserves a more detailed analysis: No matter
how often TANAKA used the term "defense" of Japan in
his testimony, still, according to the Russian proverb,
"You cannot hide an awl in a sack", and the witness
could not help mentioning "Northern problems" and the
methods of their solution, which can be described as

H-168.

- a. Ex. 2670, Tr. 23190
- b. Ex. 2675,
- c. Ex. 2676, T. 23303

1 peaceful only in the terms used by TANAKA, the typical
2 Japanese militarist. That is what he said: "Resort
3 to arms is aimed at the settling of the northern prob-
4 lem; if the northern problem could be settled by such
5 diplomatic means with armed force in the background,
6 it would be more desirable...."^d Thus, the "peaceful"
7 settlement of "northern problems" is a demand that
8 Soviet territories should be annexed to Japan under
9 threat of resorting to armed force. Further on, TANAKA
10 testified: "Though the transportation to European
11 Russia of the Soviet forces stationed in the Far East
12 will naturally take place, Soviet abandonment of the
13 Far East is certainly inconceivable."^e In these words
14 the witness without any embarrassment expressed the
15 cherished aspirations of Japanese aggressors that
16 the U.S.S.R. give up her Far East. Having admitted,
17 then, that in July 1941 the Imperial Headquarters
18 sent an instruction to the Commanding General of the
19 Kwantung Army to the effect that the aim of the
20 Kantokuen was to increase the preparedness of the Army
21 against the U.S.S.R., TANAKA, Shinichi, in substance
22 had to confirm the measures to be taken under that
23 plan; the reinforcement of divisions; the transfer of
24

25 H-168.

d. T. 23321
e. T. 23323

1 two new divisions; the additional transfer of aircraft
2 and artillery; motor-car and transport units; the con-
3 siderable transfer of ammunition, etc. However, along
4 with that the witness tried to contend without any
5 basis of fact that the Kantokuen plan was contemplated
6 only as a measure directed at strengthening the Kwantung
7 Army for defense purposes.

8 H-169. It seems the defense, producing a number
9 of witnesses testifying one and the same thing, chose a
10 method which may be called a method of obtrusive repeti-
11 tion. One witness testifies that Japan did not want to
12 wage war against the U.S.S.R., the other testifies that
13 Japan did not want to wage war against the U.S.S.R.,
14 the third witness testifies the same, and so on. The
15 plan is simple -- maybe something will be left in the
16 minds of those for whom it is said. That is how matters
17 stand as far as these witnesses are concerned. And who
18 are they? TANABE - Lt.-General, Vice-Chief of Staff;
19 TANAKA, Shinichi - Lt.-General, Chief of Operations
20 Division of the General Staff; KASAHARA - the Kwantung
21 Army Chief of Staff, the author of the proposal to attack
22 the Soviet Union;^a IKEDA - Lt.-General, Vice-Chief of
23 Staff of the Kwantung Army; OGOSHI - Colonel,
24 General Staff officer and staff officer of the

25 H-168. a. T. 23323

H-169. a. Ex. 2671, T. 23218.

1 Kwantung Army (both of the latter are, to general surprise,
2 acting in this trial as defense counsel as well as
3 defense witnesses); and others like them. These
4 witnesses are direct accomplices of the accused. Their
5 testimony is an attempt to justify by all means the
6 actions of the accused and in this way to justify
7 themselves.

8 H-170. During the first three years of World
9 War II, the Soviet Union, because of the absence of
10 the second front in Europe, was bearing the brunt of
11 the fight against the Hitlerite hordes who had
12 treacherously attacked the U.S.S.R. and hurled against
13 her the whole might of the German war machine and that
14 of her satellites. As at that time the Soviet Union
15 was carrying on an heroic struggle, unprecedented in
16 history, against the German fascist hordes, the attempts
17 to say that the Soviet Union intended to attack Japan
18 are absurd and contrary to common sense. Prosecution
19 documents show that the danger of an attack on Japan
20 has been invented now for the purpose of justifying
21 the actions of the accused, whereas, as a matter of
22 fact, the Japanese government at that time did not
23
24
25

1 expect any attack on the part of the U.S.S.R. Thus, the
2 order of Admiral YAMAMOTO, dated November 1, 1941,
3 contains the following words: "The Union of Socialistic
4 Soviet Republics is maintaining a vigilant alert, await-
5 ing developments. However, if the Empire does not
6 attack the Soviet Union, it is believed that the
7 Soviet Union will not commence hostilities."^a

8 H-171. The defense attached great importance
9 to the so-called "purely defensive plans" of Japan,
10 drafted in 1944-45. We do not deny that in the spring
11 of 1944 the Japanese General Staff for the first time
12 had to begin drafting defensive plans contemplating war
13 with the U.S.S.R. But that took place when the Soviet
14 Army had already broken the spine of the German fascist
15 army and the Japanese Army was suffering defeat from the
16 allies.

17 H-172. The defense presented a number of
18 documents showing that in the summer of 1945 the Japan-
19 ese government was seeking the good offices of the
20 Soviet Union in putting an end to the war between Japan,
21 the U.S.A., Great Britain, and other countries. These
22 documents are telegrams from Tokyo to Moscow to the
23 Japanese Ambassador SATO and from SATO to Tokyo.^a

24 H-170. a. Ex. 809, T. 7988.
25

1 It is known to the whole world that the Japanese govern-
 2 ment tried to resort to these good offices in order to
 3 avoid unconditional surrender and save her armed forces
 4 for the future. Therefore, the Soviet Union rejected
 5 the request of the Japanese government with regard to
 6 mediation. True to her commitment to the Allies, the
 7 U.S.S.R., at the request of the U.S.A. and Great Britain,
 8 declared war on the Japanese aggressor on August 9, 1945,
 9 thereby contributing to the speedier termination of
 10 World War II which cost mankind tens of millions of
 11 lives.

12 H-173. The Neutrality Pact was also grossly
 13 violated by the Japanese Government by Japan's contain-
 14 ing the forces of the Soviet Army in the Far East for
 15 the purpose of rendering assistance to Germany. The
 16 German Ambassador in Japan in his telegram to Berlin
 17 dated July 3, 1931 reported: "...the augmentation of
 18 military preparations, among other things, with an eye
 19 to realizing this object, together with the aim of
 20 restraining Soviet Russia in the Far East in her
 21 struggle with Germany is steadfastly kept in the mind of
 22 the Japanese Government."^a In Ribbentrop's telegram to

23 H-172.

24 a. Ex. 2696, T. 23587; Ex. 2697, T. 23587;
 25 Ex. 2698, T. 23588; Ex. 2699, T. 23588;
 Ex. 2700, T. 23588; Ex. 2701, T. 23588;
 Ex. 2702, T. 23588; Ex. 2703, T. 23590;
 Ex. 2704, T. 23590; Ex. 2705, T. 23590.

H-173. a. Ex. 636, &. 7009

1 Tokyo dated May 15, 1942, it is said that if Japan is
2 not strong enough to wage war against the U.S.S.R.,
3 Japan had better maintain neutrality. And further
4 on: "This also eases our burden since in any event
5 Russia must maintain troops in the East Siberia in
6 anticipation of a Japanese-Russian conflict."^b In his
7 conference with Ribbentrop held March 6, 1943, OSHIMA
8 told him about the positive results of this policy,
9 adding that the "Russians ... in the course of their
10 history had always until now made extremely unpleasant
11 experiences with surprise attacks on the part of Japan."^c

12 THE PRESIDENT: We will recess for fifteen
13 minutes.

14 (Whereupon, at 1045, a recess was
15 taken until 1100, after which the proceedings
16 were resumed as follows:)

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23 4-173.

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25 b. Ex. 807, T. 7984
c. Ex. 812-A, T. 8014.

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: General Vasiliev.

4 GENERAL VASILIEV: B. FURNISHING TO GERMANY
5 POLITICAL AND MILITARY POSITION OF THE U.S.S.R.

6 H-174. The Neutrality Pact was also grossly
7 violated in that the Japanese Government, since the
8 first days of the German attack against the U.S.S.R.,
9 furnished to Germany secret military information
10 about the economic, political and military position of
11 the U.S.S.R., using for that purpose Japanese military
12 and diplomatic agencies. In his telegram of July 10,
13 1941, Ribbentrop entrusted Ott to: "Please thank the
14 Japanese Foreign Minister at this opportunity for
15 having transmitted the telegram from the Japanese Am-
16 bassador at Moscow. It would be good if we could
17 receive more news from Russia in this way at regular
18 intervals." ^{a.} The witness MATSUMURA, former Major
19 General of the Japanese Army, who held the post of Chief
20 of the Russian section of the General Staff from Oct-
21 ober 1942 to August 1943, testified that in accordance
22 with the order of the General Staff he: "Systematically
23 forwarded to the 16th Section (German relations) for
24 Colonel Kretschmer the intelligence regarding Soviet
25 (H-174. a. Ex. 771, T. 7874)

1 military forces, their disposition in the Far East,
2 war potential of the Soviet Union, movement of Soviet
3 divisions to the west from the Far East, internal
4 movements of Soviet strength and reconstruction of the
5 withdrawn Soviet industries. These intelligence were
6 based upon materials reported to the General Staff
7 office from Japanese military attaches in Moscow and
8 various other intelligence sources . . . used to deliver
9 intelligence to the 16th Section (in charge) of German
10 affairs about once a month." b.

11 H-175. In the days of final battles aiming
12 at the defeat of the German army, Soviet armed forces
13 apprehended NOHARA, Komakichi, an employee of the
14 Japanese Embassy in Berlin, with the documents con-
15 taining information about the military position of the
16 U.S.S.R. The essential part of his evidence is as
17 follows: "The greater part of the present documents
18 which were found about me are copies of memorandums
19 containing secret information about the number and
20 disposition of the units of the Red army, its equipment
21 and supplies, the state of the war industry of the
22 Soviet Union and its production: planes, tanks and
23 also man power of the U.S.S.R. The Japanese Embassy
24 in Berlin received military information of similar
25 (H-174. b. Ex. 836, T. 8164)

1 nature about the Soviet Union from Japanese Ambassadors
2 in Moscow, TATEKAWA and SATO, in the form of ciphered
3 telegrams, at which the Counselor KASAHARA and me
4 worked afterwards and translated into German. After-
5 wards the Japanese Embassy in Berlin passed that infor-
6 mation to the German Ministry for Foreign Affairs." ^{a.}

7 H-176. The documents found on NOHARA dealt
8 with such questions as "war potential of Soviet Russia,"
9 "numerical strength of the Red Army," etc. Petersdorf,
10 former assistant military attache in Tokyo, confirmed
11 the systematic receiving from the Japanese General
12 Staff of secret military information about the Soviet
13 Army. That information was immediately conveyed to
14 Berlin. What kind of information was it? This is
15 what Petersdorf says about it: "I received all mili-
16 tary information about the Russian Far Eastern Army,
17 namely: disposition of troops, their strength, military
18 transportation, the details about the reserves, move-
19 ments of Soviet troops at the European front as well
20 as the data concerning the war industry in the Soviet
21 Union." ^{a.} Petersdorf also stated that the nature of
22 the information received from the Japanese General Staff
23 was beyond the scope of the information usually
24 (H-175. a. Ex. 811, T. 7993)
25 (H-176. a. Ex. 3858, T. 38425)

received by military attaches through legal channels.
1 Besides, Petersdorf pointed out that that information
2 was of great importance for the German Army and was
3 used specifically in the military operations against
4 the Soviet Union.
5

6 C. HAMPERING SOVIET SHIPPING IN THE FAR EAST,
7 ILLEGAL DETENTION AND PIRATIC ATTACKS ON
8 SOVIET SHIPS.

9 H-177. The Japanese Government grossly vio-
10 lated the Neutrality Pact also in that they hampered
11 in various ways Soviet shipping in the Far East for
12 the purpose of rendering assistance to Germany. After
13 the German attack against the U.S.S.R., shipping in
14 the Far East to maintain communication with Russian
15 ports as well as for foreign navigation, particularly
16 for shipping various goods purchased in the U.S.A.,
17 was of great importance to the U.S.S.R. The Neutrality
18 Pact did not prevent the Government of Japan from
19 officially informing the Soviet Government on August 25,
20 1941, that the shipment from "The U.S.A. to Vladivostok
21 of the materials purchased by the U.S.S.R. creates an
22 embarrassing and very delicate situation for Japan."^{a.}
23 The Japanese Government prohibited the use of the
24 (H-176. b. T. 38448; T. 38503-4)
25 (H-177. a. Ex. 813, T. 8026)

1 Sangar Strait -- the shortest and most convenient
2 route to the Pacific Ocean. Instead of this it was
3 proposed that ships go through the Laperousa Strait
4 or through southern straits which considerably length-
5 ened the route and consequently diminished the turnover
6 of ships. Furthermore, southern routes were not safe.
7 Passing through the Korean Straits, the Soviet ships
8 "Angarstroi," "Kola" and "Ilmen" were sunk by submarines.
9 Because of this the use of the Korean Straits was dis-
10 continued. The Laperousa Strait not only considerably
11 lengthened the route but it was covered with ice for
12 three to four months. The route to the Pacific Ocean
13 through the Laperousa Strait required also passage
14 through the Kurile Straits, most of which -- especially
15 the nearest southern straits -- were not convenient
16 for the navigation of ocean-going vessels. All these
17 circumstances are given in detail in a report of the
18 Chief of the Naval General Staff of the U.S.S.R. dated
19 February 20, 1946.^{b.} A map showing all these routes
20 was tendered to the Tribunal.^{c.} One need only examine
21 that map to see what difficulties were created for
22 Soviet shipping during the time of the Soviet Union's
23 war with Fascist Germany and her satellites. By these
24 actions the Japanese Government not only flagrantly
25

(H-177. b. Ex. 813, T. 8026
c. Ex. 2690, T. 23536)

1 violated the Neutrality Pact of 1941, but also the
2 Portsmouth Treaty of 1905, under which Japan had no
3 right to hamper the free navigation of Soviet ships in
4 that area.^{d.} The documents tendered to the Tribunal
5 show that the molesting of Soviet shipping was sys-
6 tematic, well considered and carried out with the
7 express purpose of creating difficulties for the Soviet
8 Union in her war with Germany.

9 H-178. The Japanese ruling circles not only
10 tried to please Germany in every way in that respect,
11 but even considered themselves obliged to make reports
12 to the Hitlerite government as to the measures taken.
13 In the course of his conversation with Ribbentrop on
14 June 24, 1942, OSHIMA conveyed information to Ribbentrop
15 about the results of the examination by the Japanese of
16 Soviet vessels and expressed the opinion that the Jap-
17 anese occupation of the western Aleutians would in the
18 future hinder the Soviet Union in shipping these goods.^{e.}
19 There is the following passage in the record of Rib-
20 bentrop's conference with OSHIMA held on March 6, 1943.
21 "Concerning our reports on Russia's imports from the
22 U.S.A. via Vladivostok, OSHIMA thought that Japan al-
23 lowed the Russians only one seaway, and that on this
24 (H-177. d. Ex. 21.)
25 (H-178. a. Ex. 778-A, T. 7903)

b.

seaway all ships are searched for arms and ammunition."

1 H-179. The Japanese authorities unlawfully
2 detained Soviet vessels and arranged piratic attacks
3 which constituted a flagrant act of aggression. In the
4 period from August 1941 to 1944, inclusive, Japanese
5 armed forces detained 178 Soviet merchant vessels,
6 three of which were detained by armed force.^{a.} As an
7 example, we shall give a few specific cases of unlawful
8 detention of Soviet vessels which were investigated
9 by Soviet authorities. The ship "Sergei Kirov," bound
10 from Petropavlosk for Vladivostok with a cargo of food-
11 stuffs on board, while passing the Korean Straits in
12 April 1942, was detained by a Japanese destroyer and
13 led into Tokyo Bay, where she was under arrest for six
14 days.^{b.} In July 1943, the ship "Dvina" was detained
15 in the Laperousa Strait and led to the Port Otomari,
16 where she was unlawfully placed under arrest for 35
17 days, the Japanese authorities perpetrating all sorts
18 of outrages against Soviet seamen.^{c.} In April 1943,
19 the ship "Ingul" was detained in the Laperousa Strait
20 and led to the Port Otomari, where it was under arrest
21 for two months.^{d.} In December 1941, Japanese armed

22 (H-178. b. Ex. 812-A, T. 8014)

23
24 (H-179. a. Ex. 813, T. 8026
25 b. Ex. 815, T. 8036
 c. Ex. 816, T. 8037
 d. Ex. 817, T. 8039)

forces attacked the Soviet ships "Krechet," "Svirstroi,"
1 "Sergei Lazo" and "Simpheropol," which were undergoing
2 repair in the port of Hong Kong. Soviet identification
3 signs and flags were clearly seen on those ships, but
4 in spite of this the ships were shelled. As the re-
5 sult of shelling, the ship "Krechet" was sunk and the
6 ships "Svirstroi," "Sergeo Lazo" and "Simpheropol" were
7 damaged. The property was looted. On the ships "Sergei
8 Lazo" and "Svirstroi," the Japanese authorities who
9 had captured them hoisted Japanese flags.^{e.} It was
10 ascertained exactly that it was Japanese planes that
11 on December 17 and 18, 1941 attacked the Soviet ship
12 "Perekop" and sunk her. The bombing of the ship (an
13 unarmed timber carrier) took place in daytime in condi-
14 tions of good visibility, and as there were clear
15 identification signs on the ship, any error on the
16 part of Japanese air forces was excluded. After the
17 sinking of the ship her crew, through the fault of the
18 Japanese authorities, wandered for a year and a half
19 before they succeeded in returning to their fatherland.
20 The circumstances of the sinking of the ship "Perekop"
21 are described in detail in the affidavit of Chief Mate
22 Budarin^{f.} and confirmed by him in his testimony given
23 in open court.^{g.} The ship "Maikop" was sunk by Japanese
24 (H-179. e. Ex. 818, T. 8041; Ex. 829, T. 8045
25 f. Ex. 819, T. 8045; Ex. 822, T. 8049
g. T. 32570-7)

planes in December 1941. This may be seen from the^{h.}
document drafted by Levchenko, Captain of the ship.

In January 1944 the Soviet tanker "Mariupol," bound
for the U.S.S.R. from the U.S.A., in passing through
the first Kurile Strait ran on reefs near the Otomari-
Saki cape. It was quite possible to rescue the tanker
had the Japanese authorities permitted rescue opera-
tions. However, other Soviet ships for a long time
were not permitted to approach the "Mariupol" until
rescuing operations became hopeless and the ship sank.^{i.}

H-180. The tactics of the defense with regard
to the violations by Japan of the Neutrality Pact aim
on the one hand at the negation of facts, and on the
other at attempting to establish the right of Japan
not to adhere to the Neutrality Pact. Generally speak-
ing, the defense go still further. They contend that
there is no provision in International Law to the effect
that the violation of the Neutrality Pact is a crim-
inal act at all. This relates to the question of the
jurisdiction of the Tribunal which was long ago and
repeatedly decided by the Court unfavorable to the
defense. The defense try to prove that allegedly the
Soviet Union violated the Neutrality Pact and therefore
the Japanese Government could consider themselves free

(H-179. h. Ex. 823, T. 8051
i. Ex. 824, T. 8053)

from adhering to the Pact. For that purpose, the
1 defense tendered the affidavit of Dean, Major General
2 in the U. S. Army^{a.} and the affidavit of SATO, former
3 Japanese Ambassador in the U.S.S.R.^{b.} The principal
4 violation of the Neutrality Pact which the defense
5 want to see in the actions of the Soviet Union is that
6 the U.S.S.R. conducted negotiations with the U.S.A.
7 and Great Britain about entering the war against Japan,
8 and then in August 1945 commenced hostilities against
9 Japan. But, as we have proved already, the Japanese
10 Government concluded the Neutrality Pact with treach-
11 erous aims in view without any intention of imple-
12 menting it. The Japanese Government repeatedly and
13 grossly violated the Pact, and because of that the
14 Soviet Government had to denounce the Neutrality Pact
15 as soon as the time of denunciation provided for in
16 Article 3 of the Pact arrived. The entry of the Soviet
17 Union into the war against the Japanese imperialists
18 after the denunciation of the Neutrality Pact is to
19 the credit of the Soviet Union in her struggle against
20 aggression.
21
22

23 (H-180. a. Ex. 2706, T. 23636
24 b. Ex. 2695, T. 23575)
25

H-181. As to the charge that Japan furnished Germany with military and political information about the U.S.S.R., the defense tried during the cross-examination of the witness MATSUMURA to obtain evidence to the effect that it was the routine duty of a military attache to get various information about the military position of the countries in which they were accredited. However, we do not charge the accused with obtaining information through a military attache. What is meant is that the German government was furnished important secret information which could not be lawfully obtained and the furnishing of which aimed at rendering assistance to Germany in her war against the U.S.S.R.^{a.} Kretschmer in his affidavit, offered by the defense, points out that "the Japanese information was always very sparse and often worthless."^{b.} I have said enough about the value of the testimony given by Kretschmer, the German Military Attache in Tokyo. Had Kretschmer given any other testimony he would have had to confess that he had actively and maliciously participated in perpetrating actions constituting an international crime. Moreover, the statements of the witness Petersdorf^{c.} are a sufficient

(H-181. a. Ex. 836, T. 8139; Ex. 3858, T. 38428
b. Ex. 2751, T. 24615
c. Ex. 3858, T. 38428.)

refutation of Kretschmer's testimony.

1 H-182. All prosecution documents proving that
2 Japan molested Soviet shipping and arranged piratic
3 attacks on Soviet vessels were met by the defense with
4 the testimony of a witness who may well be called an
5 "all-round" witness because he without any difficulty
6 affirms or on the contrary denies (depending on whether
7 it serves the interests of the accused or not) anything
8 relating to shipping. I refer to the witness Captain
9 FUJITA, former employee of the Japanese Naval Ministry,
10 where he served from June 1942. However, that fact
11 did not prevent him from testifying about the circum-
12 stances which had taken place before he was employed
13 by the Ministry. He explains that by testifying that
14 he allegedly saw the documents bearing upon those
15 circumstances. References to documents in FUJITA's
16 testimony are anecdotic. Incidentally, the same is
17 typical of most defense witnesses in this trial. It
18 seems that a reference by the witness to a document
19 is a prelude to the presentation of the document. One
20 logically follows from the other. In the testimony
21 of defense witnesses including FUJITA this is a prelude
22 to saying "But there are not documents. They have not
23 been preserved, war, surrender, fires, etc." What is
24 the value of such testimony? This witness, as well as
25

many other defense witnesses -- and to that I have
 1 already invited the Tribunal's attention -- is a person
 2 closely connected with the crimes committed by the
 3 Japanese military. Some committed crimes, others
 4 covered them up, and are still covering them up.

5 Having no documents, the witness FUJITA, however, dis-
 6 played phenomenal memory in referring to the documents
 7 which should justify the actions of the accused and
 8 recalled a number of minute details. He went so far
 9 as to contend, though it was obviously absurd, that
 10 the measures taken to restrict Soviet shipping were
 11 allegedly in the nature of a "friendly warning."^{a.}

12 Being unable to deny all the facts, FUJITA had to con-
 13 firm that the Sanger Strait was in reality closed and
 14 that Soviet shipping was thereby undoubtedly placed
 15 in a difficult position.^{b.}

17 H-183. On the map presented by the prosecu-
 18 tion^{a.} is shown the route through the Laperousa Strait
 19 and the northern-most Kurile Strait proposed by the
 20 Japanese government for Soviet vessels to follow. The
 21 witness FUJITA confirmed that that was the route fol-
 22 lowed by Soviet vessels.^{b.} However, at the suggestion
 23 of the defense the witness drew a line on that map
 24 through southern Kurile Straits which could allegedly

25 (H-182. ^{a.} T. 23529. . . (H-183. ^{a.} Ex. 2690, T. 23536
^{b.} T. 23535.) ^{b.} T. 23545.)

1 be used as a shorter route to the Pacific Ocean, while
2 the Japanese themselves did not even use the Southern
3 Kurile Straits in winter time as they were impassible.
4 To the question whether he could guarantee that these
5 southern straits were navigable the witness replied
6 that he was not a navigation expert.^{c.} It is clear
7 from this reply that the witness drew a pencil line
8 between the Kurile Islands, completely disregarding
9 the possibility of navigation for ocean-going vessels.
10 The witness FUJITA confirmed the fact of the sinking
11 of the ship "Angarstroi" in May 1942. However, he
12 said that the ship was not sunk by a Japanese submarine
13 because Japanese submarines allegedly did not ply in
14 that area, but was sunk by submarines of other countries,
15 particularly the U.S.A. or England.^{d.} The Tribunal
16 will appraise in its "merits" the statement of this
17 witness who in shielding the Japanese priates went so
18 far as to contend that the Soviet ship had been sunk
19 by the allies of the U.S.S.R. The witness FUJITA also
20 confirmed the sinkings of the ships "Perekop" and
21 "Maikop" but without any grounds denied the partici-
22 pation of Japanese aircraft in those sinkings.^{c.} As to
23 the detention of Soviet ships the witness testified
24

25 (H-183. ^{c.} T. 23541.
d. T. 23509-10.
e. T. 23512.)

1 without any basis of fact that the ships were detained
2 because the ships' papers were out of order. What was
3 wrong was not specified. Finally, the witness FUJITA
4 did not deny that the Soviet ship "Mariupol" perished,
5 but said that allegedly it was impossible in a shorter
6 period of time to give permission to Soviet vessels
7 to approach the ship and rescue her.

8 H-184. Thus, in concluding the prosecution's
9 phase dealing with the violation by the Japanese govern-
10 ment of the Neutrality Pact with the U.S.S.R. and with
11 acts of aggression against the U.S.S.R. in the period
12 following the German attack against the Soviet Union,
13 we submit that the defense did not succeed in refuting
14 a single charge made by the prosecution.

15 9. Conspiracy.

16 H-185. The prosecution contends and has
17 proved that there existed a common conspiracy of leaders
18 of the Japanese ruling clique against freedom-loving
19 nations and that one of the most important aims of
20 that conspiracy was aggression against the Soviet Union.
21 The existence of a common conspiracy was quite con-
22 vincingly shown by the other representative of the
23 prosecution from the point of view of legal substan-
24 tiation as well as from the standpoint of the factual
25 aspect of the matter. Without repeating these arguments

1 I all the same deem it necessary to deal with some
2 issues relating to the legal nature of conspiracy, and
3 the scope of the responsibility of its participants.

4 H-186. The concept of conspiracy as a
5 criminal combination established for the commission
6 of criminal actions is well known in national systems
7 of law. In the Soviet criminal law, Anglo-Saxon law
8 and the legal systems of many other countries, though
9 different in some aspects, conspiracy is regarded as
10 the most dangerous form of co-participation of several
11 or many people in the preparation and commission of a
12 crime. And this is a well-founded contention. Con-
13 spiracy is not a mere agreement of several criminals;
14 conspiracy is a ready human machinery specially created
15 for the commission of crimes -- machinery with a de-
16 tailed plan of actions, with a distribution of roles
17 and functions, with a system of subordination to a
18 single directing center. The very existence of such
19 a criminal machinery is a considerable public danger
20 requiring vigilant attention and determined struggle
21 on the part of the authorities. Naturally the public
22 danger of such a conspiracy tremendously increases
23 and the damage inflicted by it threatens to become an
24 international calamity if the participants of the con-
25 spiracy act in the international arena and the crimes

become an instrument of policy of one country or of a group of countries.

H-187. The planning and execution of aggression, the planning and commission of mass murders and lootings is invariably conducted with the help of the leaders of the band. Such facts are known in history; they are fresh in the memory of nations. Such was the case in Hitlerite Germany and such also was the case in imperialist Japan. This system of conspiracies is not accidental; it was brought about by the special character of such international crimes as aggression, war crimes or crimes against humanity. As a matter of fact, the above-mentioned international crimes differ from the crimes known to the national criminal law in that they are constituted not of a sporadic action (stabbing with a knife, arson, etc.), but of a system of actions, of a definite kind of activity (preparation of aggression, extermination of prisoners of war, etc.). Such activities, due to their nature and scope, require the coordinated action of a considerable number of people. Therefore a co-participation in its most primitive form -- when the connection between the participants is of an elementary character and the mutual awareness of the participants of their criminal actions is easily established -- is a rare phenomenon as far as

the commission of international crimes is concerned.

1 The co-participation in the conspiracy for the com-
2 mission of international crimes organized and executed
3 by a militarist clique is seen in that the co-conspir-
4 ators are linked up by a single criminal design and
5 criminal plan, and are mutually informed about the
6 general direction of actions taken to realize the
7 criminal plan, though they could not have known about
8 every criminal action committed by any of the co-
9 participants.
10

11 H-188. The complexity of the machinery neces-
12 sary for the perpetration of criminal activities directed
13 against the interests of the whole of mankind logically
14 leads to co-participation in the commission of inter-
15 national crimes and takes the form of co-participation
16 (Sui Generis) in a criminal conspiracy organized and
17 executed by a militarist clique. Such a clique in
18 Germany, making use of its political power, based its
19 daily activities on a net of organizations established
20 by it: the Gestapo, the S.S., the fascist party and
21 others. Such a clique in Japan, making use of its
22 political power, relied upon a whole system of institu-
23 tions and organizations including such organizations as
24 the "Imperial Rule Assistance Association," upon such
25 capitalist monopolies as MITSUI, MITSUBISHI, SUMITOMO,

YASUDA and others commonly known as the Zaibatsu.

That clique was a center and inspiration of a plan
for an aggressive war against the democratic nations
which was exposed later on.

H-189. The common aims of criminal aggression united that clique. Its leaders and rank-and-file members were all welded together with a criminal plan for an aggressive war and should be regarded as participants in the conspiracy, bearing full responsibility for the existence of the conspiracy against peace as well as for all the consequences of the realization by them of their conspiratorial plans. Of course, the legal nature of such a conspiracy is different from the legal nature of a criminal gang of thieves and robbers who agreed to jointly rob a shop, office or a private apartment. When a clique of conspirators seizes power in a state and the whole governmental machinery is mobilized to serve the criminal aims of that clique, there is no doubt that the ties lining up the members of such a band are very complicated. There is a dense and delicate network of relationships. The difference of opinion between various groups inside that clique, which also partly found its expression in the change of governments, was a difference of a tactical or personal nature relating to the direction of aggression, the choice of the opportune moment for starting it, the place and methods of conducting it, etc. This, however, can in no way eliminate the fact of their participation

1 in the joint crime and consequently cannot relieve
2 them of the responsibility which each of them bears
3 for the realization of aggression, i. e., for the
4 commission of an international crime.

5 H-190. The law in accordance with which
6 the High Tribunal tries the major Japanese war
7 criminals fully takes into account the specific
8 features of conspiracy. This may be seen in the
9 Charter of the Tribunal: "Leaders, organizers,
10 instigators and accomplices participating in the
11 formulation or execution of a common plan or con-
12 spiracy to commit any of the foregoing crimes are
13 responsible for all acts performed by any person in
14 execution of such plan."^{a.} This contention is quite
15 clearly expressed in the Indictment: "It is charged
16 against each of the accused that . . . he was one
17 of those responsible for all the acts and omissions
18 of the various governments of which he was a member
19 and of the various civil, military or naval organiza-
20 tions in which he held a position of authority."^{b.}
21 In this charge there is a clear and well-founded con-
22 cept of a conspiracy of international criminals as a
23 criminal combination acting by means of using the
24 central government organs and a complex network of
25

H-190. a. Charter, Art. 5, par. C; b. Indictment,
Appendix E.

auxiliary organizations.

1 H-191. Under such a system the distance
2 between the leaders of a conspiracy and those who
3 implemented their criminal plan can be very consider-
4 able both geographically and from the point of view
5 of their official positions. It is also clear that
6 the participants in such a conspiracy do not and
7 cannot know all the co-conspirators mobilized by
8 them. However, all these facts do not relieve and
9 diminish the responsibility of the conspirators.
10 On the contrary these facts make the crimes of the
11 conspirators especially heavy, for due to their in-
12 stigation and their conspiracy a huge number of the
13 Japanese were drawn into criminal aggression. This
14 only makes the responsibility of the participants in
15 the conspiracy heavier. For these crimes all the
16 accused, the whole clique of major Japanese war
17 criminals, should bear full criminal responsibility.

18 H-192. The state policy of Japan in general
19 and her aggressive policy against the U. S. S. R.
20 in particular were shaped and conducted under the
21 guidance of the leaders of the militarist clique:
22 TOJO, ARAKI, UMEZU, ITAGAKI and others. All the
23 accused from 1928 to 1945 played leading roles in
24 the ruling clique of Japan, whether in the post of
25

Prime Minister, minister, diplomat or military leader, ideologist or official. There is no doubt that the accused were always organized and acted knowingly, fully understanding the character of their actions and aware of their consequences. The accused acted deliberately, setting before themselves an aim and persistently trying to attain it. Each fact presented by us to prove the Japanese aggression against the U. S. S. R. shows that all the actions of the conspirators were planned in advance, carefully prepared and consistently executed. All this proves beyond any doubt that the accused in committing their crimes participated in a criminal conspiracy, one of the most important aims of which was aggression against the Soviet Union.

Conclusion.

H-193. Your Honors!

In accordance with the provisions relating to the responsibility of the members of a conspiratorial organization, provisions common to all systems of law of civilized nations, all the members of the conspiratorial clique should bear the responsibility for aggression against the U. S. S. R. I am not going to deal now with the question whether all the members of that clique are among the accused. One thing is

clear -- all the accused in the dock bear the responsibility for aggression against the U. S. S. R. Addressing this Tribunal on behalf of the Union of Soviet Socialist Republics I consider all the charges brought against the accused proved with regard to aggression against the U. S. S. R. as well as on other counts of the Indictment. The prosecution considers the guilt of all the accused proved in the preparation and initiation of aggressive wars, conspiracy against peace, violation of laws and customs of war -- the heaviest crimes against mankind. The part played by each accused in the conspiracy is different, but each of them taken separately, as a participant of the criminal conspiracy, cannot but bear the responsibility for all the crimes committed by the whole conspiratorial clique. The analysis of the specific guilt of each accused in accordance with Section 8, Appendix A of the indictment, 'Aggression against the Soviet Union,' will be given by the prosecution when appraising the personal responsibility of the accused. Now I invite the attention of the Tribunal to the fact that the following defendants played an especially important part in the preparation and realization of aggression against the U. S. S. R. and should bear for this the heaviest responsibility.

1. TOJO, HIDEKI.

1 H-194. TOJO must, in fairness, be called a
2 leader of the Japanese militarist clique and most
3 prominent in conducting its aggressive policy toward
4 the USSR. In his capacity as Chief of the Kwantung
5 Army Gendarmerie, TOJO actively participated in sub-
6 versive and sabotage activities directed against the
7 Soviet Union. While Chief of Staff of the Kwantung
8 Army, TOJO did his best to create a military base in
9 Manchuria and to prepare a war of aggression against
10 the USSR and the Mongolian People's Republic. He
11 drafted strategic plans for an attack against the
12 Soviet Union and did his best to obtain their approval
13 in Tokyo. As Vice-War Minister, TOJO, together with
14 ITAGAKI, should bear the responsibility for an attack
15 against the Mongolian People's Republic and the Soviet
16 Union in the Khalkhin-Gol River area. While holding
17 the post of Minister and later Prime Minister of
18 Japan from July 1940, TOJO drew Japan into the Second
19 World War. His active role in the conclusion of the
20 Tripartite Pact and a military political alliance with
21 Hitlerite Germany and fascist Italy is well known and
22 does not require any special evidence. In that period
23 TOJO persistently conducted an aggressive policy against
24 the USSR. It was he who on July 2, 1941, participated
25

1 in reaching the insidious decision of the Imperial
2 Conference concerning the secret preparation for a
3 war against the USSR under the guise of a Neutrality
4 Pact. TOJO should bear full responsibility for
5 carrying out that decision in creating and imple-
6 menting the notorious "Kantokuen" plan, as a result
7 of which the whole of Manchuria was flooded with
8 Japanese troops awaiting only the last command in
9 order to rush at the Soviet Far East. Not for a
10 minute in the course of 1941-1943 did TOJO give up
11 his idea of Japan seizing the Soviet territory up
12 to Lake Baikal and did all he could to prepare and
13 carry out that criminal plan.

14 2. UMEZU, Yoshijiro.

15 H-195. General UMEZU was a most prominent
16 representative of the most reactionary part of the
17 Japanese military proponents of a close military-
18 aggressive alliance of Japan with Germany and Italy
19 and during a long period directly supervised the
20 planning and preparation of a war of aggression
21 against the Soviet Union. As far back as 1932
22 UMEZU, holding a position of authority in the
23 Japanese General Staff, participated in the prepa-
24 ration of a war against the USSR which was planned
25 for 1934. The part UMEZU played in the military

1 preparations of Japan against the Soviet Union became
2 much greater when he became Vice-War Minister in 1936.
3 He was especially active in the conclusion of the so-
4 called "anti-Comintern Pact." Together with TOJO,
5 UMEZU played an outstanding role in the creation of
6 the Manchurian military base and the preparation of
7 the Kwantung Army for an attack against the Soviet
8 Union. Being Commanding General of the Kwantung
9 Army, UMEZU from 1939 to 1943 directly supervised
10 the drafting of offensive plans and other military
11 preparations for a war of aggression against the
12 USSR. It was UMEZU who planned the capture of
13 Vladivostok, Habarovsk, Blagoveshchensk, and a number
14 of other towns and cities of the Soviet Maritime
15 Province. He also supervised the drafting of the
16 plan of activities directed against the USSR and of
17 administrative measures on the Soviet territory which
18 the Kwantung Army planned to seize. UMEZU, together
19 with TOJO and SUGIYAMA, was the author of the
20 "Kantokuen" -- a plan for the invasion of Soviet
21 territory by the Kwantung Army. In the last period
22 of his activities as Chief of the Japanese General
23 Staff, UMEZU continued to carry on preparations for
24 a war against the Soviet Union and rendered con-
25 siderable assistance to Hitlerite Germany.

3. ARAKI, Sadao.

1 H-196. ARAKI was the exponent of the extreme
2 expansionist circles of the Japanese military in the
3 whole course of his political career. During the
4 period of the Japanese intervention between 1918 and
5 1922 he took an active part in the seizure of the
6 Soviet Far East, and in the following years, when he
7 occupied positions of responsibility in the Japanese
8 government, was preparing a war of aggression against
9 the USSR. In 1933, at the conference of governors,
10 ARAKI urged that "territories of the Primorie, Kaikal
11 and Siberia should be seized by way of military occu-
12 pation." In 1938, ARAKI planned the occupation of
13 the Mongolian People's Republic. In August 1941,
14 when the attack against the Soviet Union was for the
15 Japanese imperialists only a question of time, ARAKI
16 demanded that the attack against the USSR should be
17 speeded up so as to complete what Japan had not suc-
18 ceeded in carrying out during the period of the inter-
19 vention between 1918 and 1922. ARAKI devoted his
20 whole life to the implementation of the criminal plan
21 of the Japanese military clique. He was a military
22 man, a diplomat and a secret service agent, Chief of
23 the General Staff College and Chief of the political
24 police (gendarmerie), War Minister and Education
25

Minister. In any of those roles he was first and foremost an active conspirator against peace, a champion of aggression, an advocate of violence and war, directed first of all against the USSR.

4. ITAGAKI, Seiziro.

H-196-A. The name of General ITAGAKI is closely connected with all the acts of Japanese aggression against the USSR.

ITAGAKI together with HIRANUMA and ARAKI was one of the prominent leaders of "the young officers," an adherent of an outspoken policy of occupation and terrorism, who would not keep clear of provoking any "incidents" or murdering his political opponents.

As soon as ITAGAKI assumed the post of the Kwantung Army Chief of Staff, he started drawing up plans of an attack against the Mongolian People's Republic and the Soviet Union with the view of capturing her Far Eastern areas and creating the "Greater Japan extending up to Baikal."

As War Minister, ITAGAKI was the instigator of undeclared aggressive wars against the USSR in the Lake Khasan area and in the area of the Khalkhin-Gol river and an ardent supporter of a military and political alliance between Japan, Hitlerite Germany

1 and Fascist Italy which in the first place was directed
2 against the USSR.

3 4-a. HIRANUMA, Kiichiro.

4 H-197. Regardless of the public or govern-
5 ment office which HIRANUMA held at one time or another --
6 whether he was the leader of the reactionary society
7 "kokuhonsha," or Vice-President and later President
8 of the Privy Council, Prime-Minister or Home-Minister --
9 HIRANUMA had always been most closely connected with
10 the militarist circles of Japan, whose aggressive
11 designs he supported and fomented. The entire career
12 of this defendant was devoted to pursuing an aggressive
13 policy vis-a-vis the Soviet Union and to forming a
14 military bloc of aggressive nations against the USSR.
15 In 1931, HIRANUMA carried on a campaign for the
16 severance of diplomatic relations with the Soviet
17 Union. While President of the Privy Council, HIRANUMA
18 approved the conclusion of the "Anti-Comintern Pact"
19 directed against the USSR. He played an active part
20 in the undeclared aggressive wars against the USSR and
21 the Mongolian People's Republic in 1938 and 1939. He
22 participated in the conference of July 2, 1941, at
23 which the decision of a secret preparation for a war
24 against the Soviet Union was reached. HIRANUMA
25 adopted unreservedly Hitler's criminal doctrine of

the "new order" and attempted to implant that "new order" in Asia.

5. MINAMI, Jiro.

H-198. MINAMI, Jiro, is one of the oldest leaders of the Japanese military clique. His name is associated with the planning and preparation of a war of aggression against the Soviet Union. As far back as 1928, while Vice-Chief of the General Staff, General MINAMI directed the work of drawing up plans for an attack against the Soviet Union and the organization of subversive activities vis-a-vis the Soviet Union. While in command of the Japanese Army in Korea and later as War Minister and Commander-in-Chief of the Kwantung Army, MINAMI took an active part in the seizure of Manchuria and in the establishment of a military base for an attack against the USSR. When MINAMI was a member of the Privy Council and President of the "Political Association of Greater Japan," he played an important part in implementing the plans of the conspirators for the creation of the so-called "Greater East Asia Co-prosperity Sphere" in an attempt to transform the Soviet Far East and Siberia into a Japanese colony. From the beginning to the end of MINAMI's military and political career he remained an organizer of aggression against the peoples of the

Soviet Union and other peace-loving nations.

6. SHIGEMITSU, Mamoru.

H-199. SHIGEMITSU --former Japanese Ambassador to Moscow and Minister of Foreign Affairs of Japan -- was very active in carrying out the aggressive foreign policy of the militarist clique. In 1938, SHIGEMITSU as Ambassador to the Soviet Union contributed to the initiating of an undeclared war in the Lake Khasan area, which was started by the Japanese imperialists against the Soviet Union. After Hitlerite Germany had treacherously attacked the Soviet Union, SHIGEMITSU, as Minister of Foreign Affairs in the TOJO Cabinet, proved to be an avowed adherent of the Tripartite Pact. In his numerous public addresses he advocated the common aims of Japan and Germany in World War II and together with TOJO must be held responsible for the preparation of an aggressive war against the USSR.

7. HIROTA, Koki.

1 H-200. One of the prominent leaders of the
2 Japanese ruling clique, who made his diplomatic career
3 a means for attaining the aims of the conspiracy of
4 aggressors, HIROTA manifested his criminal activities
5 against the Soviet Union particularly during his tenure
6 of office as Japanese Ambassador to Moscow and later
7 on as Prime Minister and Minister of Foreign Affairs
8 of Japan. It was he who as far back as 1931 in his
9 interview with General HARADA recommended a "firm
10 policy" vis-a-vis the Soviet Union, to be prepared for
11 an eventual war against the U.S.S.R. "at any moment,"
12 and "to conquer Eastern Siberia." HIROTA is responsible
13 for the subversive activities of the Japanese mili-
14 tarists on the Chinese-Eastern Railway for the purpose
15 of disorganizing the operation of the railway and
16 compelling the Soviet Union to sell the railway at an
17 extremely low price. HIROTA played a prominent part
18 in the conclusion of the "Anti-Comintern Pact," in the
19 formation of a bloc of aggressors against the democratic
20 countries -- first of all against the U.S.S.R. HIROTA
21 bears the responsibility for the whole preparation of
22 a war of aggression against the U.S.S.R. carried on by
23 the Japanese ruling clique, and, in particular, for the
24 turning of Manchuria and Korea into a military base for
25

an attack against the Soviet Union, for the violation
1 of the Portsmouth Treaty and the Peking Convention,
2 and for the undeclared aggressive war against the
3 U.S.S.R. in the Lake Khasan area.

4 8. OSHIMA, Hiroshi.

5 H-201. OSHIMA, former Japanese Ambassador to
6 Berlin, is one of the most prominent participants in
7 the conspiracy who exercised many efforts for the purpose
8 of concluding the Anti-Comintern and Tripartite Pacts.
9 Conducting negotiations with Hitlerite Germany in 1938
10 on the conclusion of the Tripartite Pact, OSHIMA
11 exerted strong efforts so that the pact should be directed
12 against the U.S.S.R. Being fully advised of Hitlerite
13 Germany's bandit plans of an attack against the Soviet
14 Union in 1941, OSHIMA gave every support to those plans
15 and insisted strongly that the Japanese Government
16 speed up Japan's attack against the U.S.S.R. In the
17 course of a number of years OSHIMA was engaged in
18 organizing espionage and subversive activities against
19 the Soviet Union from Germany, and in the years of the
20 war between Germany and the U.S.S.R., he was the man
21 who supplied the German General Staff with secret infor-
22 mation regarding the military and economic conditions
23 in the U.S.S.R.
24
25

9. HASHIMOTO, Kingoro.

H-202. HASHIMOTO, together with ARAKI,

1 played the role of one of the main "ideologists" of
2 aggression in the common plan of the conspiracy; he
3 always showed himself a consistent and bitter enemy of
4 the Soviet Union, not stopping at the vilest methods
5 of subversive activities. It was he who as Military
6 Attache in Turkey worked out the plan of seizure of the
7 Caucasus "by methods of military occupation." It was
8 he who, at the conference of Military Attaches in
9 Berlin, suggested that the Trotskyites and white-guard
10 Russians be utilized in the espionage and subversive
11 activities against the U.S.S.R. In January 1942,
12 HASHIMOTO advocated "incorporation" of the Soviet Far
13 East into the so-called "Greater East Asia Co-Prosperity
14 Sphere." HASHIMOTO was the main proponent of the man-
15 hating racial "theory" which was called upon to serve as
16 a basis for the seizure of foreign territories and for
17 the extermination of peoples.
18

19 10. TOGO, Shigenori.

20 H-203. Working in the field of diplomacy,
21 TOGO always carried on intense hostile activities against
22 the U.S.S.R., not stopping at the heaviest crimes. As
23 Foreign Minister from October 1941 through September
24 1942 TOGO, together with TOJO, should bear responsibi-
25 lity for the preparation of a war of aggression against

the U.S.S.R. The active role played by TOGO in that
1 matter is emphasized by the fact that during that period
2 he was a member of the Kokusaku Kenkyu-Kai and generously
3 subsidized this society which was engaged in the draft-
4 ing of plans of aggression against the Soviet Union
5 and other nations. Such is the general outline of the
6 criminal activities of a group of the accused who are
7 the main authors of aggression against the Soviet Union.
8

9 H-204. Inspired to wage wars of aggression by
10 the capitalist monopolies known as the Zaibatsu,
11 interested in aggressive wars, the military clique of
12 Japan, together with their allies -- Hitlerite Germany
13 and Fascist Italy -- formed a monstrous conspiracy
14 against mankind and were preparing the subjugation and
15 extermination of nations. It was they who, in imple-
16 mentation of their monstrous plan, initiated World War II
17 and threw the world into an abyss of sorrow and suffering,
18 and it was they who brought immense calamity to their
19 own people. When the German Fascist invaders were
20 burning down and looting towns and villages of our
21 country, torturing and murdering the population of the
22 territories of the Soviet Union temporarily occupied
23 by them, it was a result of the execution of the common
24 conspiracy to which the accused were parties, made
25 possible by the assistance which imperialistic Japan

rendered to Hitlerite Germany.

1 H-205. Therefore, Honourable Members of the
2 Tribunal, when, in the conference room you make your
3 decision which will come down in history, you cannot
4 but take into consideration that the major Japanese war
5 criminals were committing their crimes together with
6 their co-conspirators from the Hitlerite clique, and
7 that imperialistic Japan should share the responsibility
8 with Hitlerite Germany. Millions of people killed on the
9 battlefields and tortured to death in the Fascist torture
10 chambers; millions of women, children, and old men
11 exterminated in peaceful towns and villages which were
12 captured; multi-million losses suffered by the nations
13 of the whole world as a result of the immense destruction
14 brought by the aggressive war; the innumerable cultural
15 and historical values barbarically destroyed -- such
16 are the charges which mankind brings against Hitlerite
17 Germany and imperialistic Japan. A court of nations
18 has already pronounced its sentence with regard to
19 the major German war criminals. Now the whole world is
20 awaiting your just Judgment and Sentence in the case
21 of the major Japanese war criminals responsible for an
22 ocean of blood of innocent human beings, for millions
23 and millions of victims of the barbaric aggression of
24 the Japanese militarists. Your sentence should be a
25

1 threatening warning to all those who would like to
2 kindle the fire of a new war.

3 THE PRESIDENT: Mr. Horwitz.

4 MR. HORWITZ: May it please the Tribunal:

5 SECTION I.

6 I-1. It is respectfully submitted that, under
7 all the evidence, the conspiracy charged in Count 1
8 of the Indictment has been established beyond a
9 reasonable doubt. However, the defense contend that
10 there was no common plan or conspiracy. In support
11 of this contention they point out that during the period
12 charged in the Indictment there were seventeen dif-
13 ferent cabinets in charge of governmental affairs in
14 Japan, and that there were many other persons who held
15 cabinet positions and other high positions in the
16 government in addition to the accused. From these
17 facts they would have this Tribunal deduce that there
18 was no common plan and no continuity in the effectuation
19 of the conspiracy. It is respectfully submitted that
20 this contention is based upon a misconception of both
21 the nature of the conspiracy charged and the nature
22 of the various changes in the cabinet.

23 I-2. With respect to the conspiracy itself,
24 although the prosecution contends and has proved that
25 there was a common plan as charged in the Indictment

1 from the very beginning until the conclusion of the
2 conspiracy, it has not contended and has in no way
3 attempted to prove that all the conspirators, parti-
4 cularly these accused, joined the conspiracy at its
5 very inception and remained with it until its ultimate
6 failure. It is not necessary under the law of conspi-
7 racy to show that all joined in the beginning. It is
8 sufficient to show that there was a common plan among
9 two or more conspirators at the inception of the
10 conspiracy, and that the other conspirators joined
11 in the course of the effectuation of the conspiracy.
12 Although the prosecution maintains that it was proved
13 that the common plan, as finally worked out, existed
14 from the very beginning, it is not necessary to estab-
15 lish this fact in order to prove the conspiracy. It
16 would have been sufficient to have shown that the
17 common plan originally entered into was limited in
18 scope and that it thereafter, during the course of
19 the conspiracy, expanded into the common plan ultimately
20 carried out.

21 I-3. The evidence adduced by the prosecution,
22 which was corroborated in large part and supplemented
23 by the evidence introduced by the defense, shows both
24 the common plan and the continuity of its effectuation.
25 The conspiracy, as shown by the evidence just reviewed,

1 had its inception among certain officers in the army,
2 particularly those on the staff of the Kwantung Army.
3 However, it was a fact, which was clearly recognized,
4 that the conspiracy, by reason of its nature and
5 character, could not be effectuated without the coopera-
6 tion and participation of the government. It was,
7 therefore, necessary to obtain that participation and
8 cooperation. To obtain this, the original conspirators
9 had either to have at particular times a government
10 which would cooperate with respect to the particular
11 step in the conspiracy which they were then carrying
12 out or to have a government which was firmly committed
13 to the object of the conspiracy as a matter of national
14 policy. The evidence has shown that the conspirators
15 used both methods. From the time of the Manchurian
16 Incident until the HIROTA Cabinet, the conspirators
17 used the former method. Each change of cabinet during
18 that period brought into power a government which was
19 willing to go along with the step in the conspiracy
20 that the conspirators were then working out. Beginning
21 with the HIROTA Cabinet, the second method was used.
22 The HIROTA Cabinet, as the price to be paid for being
23 allowed by the conspirators to form a government, joined
24 the conspiracy and made its object the national policy
25 of Japan. This policy was never repudiated by any

1 succeeding cabinet. On the contrary, each and every
2 succeeding cabinet carried the program a step forward.
3 While certain cabinets carried it forward more rapidly
4 than others, the speed of effectuation was in each
5 instance in accordance with the plans of the conspira-
6 tors, or of most of them. While certain cabinets may
7 have seemed to be less bellicose than others, this
8 difference in attitude was solely due at the moment to
9 a question of expediency with respect to a particular
10 move in effectuating the conspiracy. It was due to a
11 doubt whether or not certain contemplated action was
12 either timely in light of all the circumstances, or
13 would be beneficial for or detrimental to the several
14 ends of the conspiracy. Not once was the opposition
15 of any cabinet after the HIROTA Cabinet directed toward
16 eliminating the evils of the conspiracy itself.

17 I-4. Of course there were many conspirators
18 in addition to these accused. However, many of the
19 principal conspirators, whom the evidence shows might
20 well have been charged along with these accused, are
21 now dead or, if living, are incapable of standing trial.
22 Of those of the conspirators who are living and are
23 capable of standing trial, these accused have been shown
24 by the evidence to be the principal conspirators. It
25 is no excuse or defense for these accused that other

1 conspirators have not been indicted. In this con-
2 nection it is well to note the efforts made in the
3 course of the defense to shift the blame for particular
4 actions, wherever possible, to persons now dead.

5 THE PRESIDENT: We will adjourn until half-
6 past one.

7 (Whereupon, at 1200, a recess was
8 taken.)
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AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Mr. Horwitz.

MR. HORWITZ: Continuing with paragraph I-5:

I-5. Moreover, the defense contention might have some validity if we could overlook the fact that the many changes in the cabinets were due in large measure to the actions of the conspirators in favor of the conspiracy. However, the evidence has shown that of the fifteen cabinets from the TANAKA Cabinet to the TOJO Cabinet, in each and every instance either the organization of the cabinet, or its downfall, and sometimes both its organization and downfall, were brought about by the conspirators in furtherance of the conspiracy. The TANAKA Cabinet resigned because of the question of the discipline of the military men who were engaged in the conspiracy. HAMAGUCHI was assassinated in an abortive attempt to eliminate from the government the followers of the "Peaceful Policy" toward Manchuria. When the WAKATSUKI Cabinet refused to go along with the conspiratorial plan for further military action in Manchuria, it was replaced by the INUKAI Cabinet which would

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1 go that far. INUKAI was, however, unwilling to recog-
2 nize the independence of Manchuria. He was assassinated
3 and his cabinet was replaced by the SAITO Cabinet which
4 was willing to establish a so-called independent Manchu-
5 kuo. The OKADA Cabinet was eliminated by the revolution
6 of February 26, 1936, and replaced by the HIROTA Cabinet
7 which affirmatively joined the entire conspiracy. The
8 HIROTA Cabinet fell because of the efforts of the mili-
9 tary conspirators to eliminate the opposition of the
10 political parties. The HAYASHI Cabinet was formed only
11 after the conspirators made it impossible for UGAKI to
12 set up a government. The first KONOYE Cabinet resigned
13 for the purpose of better effectuating the conspiracy.
14 His successor HIRANUMA resigned and was succeeded by
15 ABE because of the failure of the negotiations for a
16 military alliance with Germany, an important element in
17 the conspiracy. The YONAI Cabinet was compelled to re-
18 sign because its policy was unsatisfactory to the group
19 of the conspirators who wanted a strong alliance with
20 Germany. YONAI was succeeded by KONOYE, who admittedly
21 was liked by the military conspirators and was in favor
22 of the German alliance. The second KONOYE Cabinet re-
23 signed solely for the purpose of eliminating MATSUOKA,
24 who desired to move forward in a direction not desired
25 by the majority of the conspirators. The third KONOYE

1 Cabinet fell, and the TOJO Cabinet was organized over
2 the issue whether or not there should be an immediate
3 war of aggression in furtherance of the conspiracy. A
4 review of the cabinets of Japan during the period of the
5 conspiracy, rather than revealing the lack of a common
6 plan and a conspiracy, emphasizes immeasurably both the
7 existence of the common plan and the continuity of its
8 effectuation and establishes both facts beyond any
9 question or doubt.

10 If it pleases the Tribunal, at this time the
11 prosecution respectfully submits that it be permitted
12 to dispense with the reading of the balance of this
13 section, excepting for the latter half of paragraph I-8
14 appearing in the middle of page I-9, and that this
15 material be entered into the transcript as though it had
16 been read.

17 The purpose of this section is to serve as an
18 index to the evidence already considered in relation to
19 the specific Counts charging crimes against peace. The
20 reading of this particular portion, it is submitted,
21 will serve no particularly useful purpose at this time.

22 THE PRESIDENT: We direct that it be taken as
23 read into the transcript.

24 (The above-mentioned portion of the
25 summation, which was not read, is as follows:)

C. THE OTHER CONSPIRACIES

1
2 I-6. The evidence considered in connection
3 with Count 1 likewise establishes beyond any doubt the
4 other conspiracies charged in the Indictment. To con-
5 sider the evidence particularly applicable to the other
6 conspiracy Counts, as well as the substantive Counts,
7 would be wholly repetitious of the evidence already con-
8 sidered. It will be sufficient to point out those
9 portions of the evidence which establish the particular
10 conspiracy Counts now being considered.

11 Count 2 is established by all the evidence
12 considered in Part I of the Conspiracy, paragraph D-1 to
13 D-97, inclusive.

14 Count 3 is established by all the evidence con-
15 sidered in Parts I, II, III, and IV of the Conspiracy,
16 particularly Parts I and II, paragraphs D-1 to D-97, and
17 E-1 to E-106, inclusive.

18 Count 4 is established by all the evidence
19 contained in Parts I, II, III, and IV of the Conspiracy,
20 particularly Parts III and IV, paragraphs F-1 to F-158,
21 G-1 to G-174, and H-1 to H-184, inclusive.

22 Count 5 is established by all the evidence
23 contained in Parts I, II, III, and IV of the Conspiracy,
24 particularly Part II, paragraphs E-51 to E-57, inclus-
25 ive; Part III, Section B, paragraphs F-99 to F-158,

1 inclusive.

2 Count 37 is established by the evidence con-
3 tained in paragraphs G-26 to G-161, inclusive, in Part
4 IV of the Conspiracy.

5 Count 38 is established by the evidence con-
6 tained in paragraphs G-26 to G-161, inclusive, in Part
7 IV of the Conspiracy.

8 D. THE SUBSTANTIVE COUNTS

9 I-7. It would likewise be repetitious to con-
10 sider the evidence with respect to each of the substant-
11 ive Counts. It has already been considered in connection
12 with Count 1. It will, therefore, be sufficient to
13 point out those portions of the evidence which establish
14 the offenses charged in the several substantive Counts.

15 Count 6, charging the planning of aggressive
16 war against China, is established by the evidence con-
17 sidered in Parts I, II, and Section A of Part III of
18 the Conspiracy.

19 Count 7, charging the planning of aggressive
20 war against the United States, is established by all the
21 evidence considered in Part III and in Section A of Part
22 IV of the Conspiracy.

23 Counts 8, 9, 10, 11, and 12, charging the
24 planning of aggressive war against the British Common-
25 wealth of Nations, are established by the same evidence

which establishes Count 7.

1 Count 13, charging the planning of aggressive
2 war against the Philippines, is established by the same
3 evidence that establishes Count 7.

4 Count 14, charging the planning of aggressive
5 war against the Netherlands, is established by the same
6 evidence that establishes Count 7.

7 Count 15, charging the planning of aggressive
8 war against France, is established by the same evidence
9 that establishes Count 7.

10 Count 16, charging the planning of aggressive
11 war against Thailand, is established by the same evidence
12 which establishes Count 7.

13 Count 17, charging the planning of aggressive
14 war against the U.S.S.R., is established by Section B
15 of Part IV of the Conspiracy.

16 I-8. The initiation Counts, in so far as the
17 aggressive character of the war initiated is concerned,
18 are established by the same evidence which establishes
19 the aggressive character of the wars in each of the
20 other Counts, including the main conspiracy.

21 Count 18, charging the initiation of aggressive
22 war against China on or about September 18, 1931, is
23 established by paragraphs D-28 to D-37, inclusive, of
24 Part I of the Conspiracy.
25

1 Count 19, charging the initiation of aggressive
2 war against China on or about July 7, 1937, is establishe
3 by paragraph E-31 to E-41, inclusive, of Part II of the
4 Conspiracy.

5 Counts 20 and 21, charging the initiation of
6 aggressive war against the United States and the Philip-
7 pines, are established by paragraphs G-132 to G-141,
8 inclusive, of the Conspiracy.

9 Count 22, charging the initiation of aggressive
10 war against the British Commonwealth of Nations, is
11 established by paragraphs G-132 to G-141, inclusive, of
12 the Conspiracy.

13 MR. HORWITZ: I will then turn to page I-9,
14 about the middle of the page:

15 Count 23, charging initiation of aggressive war
16 against France, is established by paragraphs G-36, G-46,
17 G-173 of the Conspiracy. If it is the defense's con-
18 tention that Japan was never at war with France, it is
19 submitted that such contention is wholly untenable. The
20 contention is based upon the theory that Japan obtained
21 the right to occupy French Indo-China by treaty from the
22 Vichy Government. However, this completely ignores the
23 circumstances under which Japan obtained those rights.
24 Even before Vichy consented to Japan's occupation of
25 Indo-China, on September 6, 1940, and September 23, 1940,

1 Japanese troops had crossed the border and invaded Indo-
2 China.^{a.} It is the prosecution's contention that the
3 invasion of the territory of a nation by the armed
4 forces of another nation for purposes of aggression,
5 even though the aggrieved nation later consents, con-
6 stitutes the initiation and waging of aggressive war
7 until the consent is given. While the consent may
8 legalize the subsequent occupation, it cannot cure the
9 previous illegality. Even if there had been no invasion
10 of French territory prior to the signing of the agree-
11 ments, the subsequent occupation, pursuant to the agree-
12 ment with Vichy, constituted the initiation and waging
13 of aggressive war. Where a nation, which has been sub-
14 jugated and held captive by another, is forced to comply
15 with the aggressive demands of a third nation under
16 threat of military action, if such demands are not
17 complied with, the consent obtained is invalid as having
18 been obtained under duress, and the subsequent occupation
19 constitutes the initiation and waging of aggressive war.
20 If this contention were not recognized, one of the
21 fundamental purposes of international law and of all
22 law -- to protect the weak against the deprivations of
23 the strong -- could be easily obviated. An aggressor
24 need only obtain by duress compliance with his demands
25 (I-8. a. Ex. 620, T. 6929-33.)

1 and the weak, defeated nation would have no recourse or
2 remedy. The weak nation, even though completely sub-
3 jugated, would have to choose to fight a powerful enemy
4 in order to obtain the protection of the law. This, it
5 is submitted, would be the negation of all law. A law,
6 whose function is to prevent breaches of the peace, can-
7 not have as an absolute prerequisite to its invocation
8 another breach of the peace. If the Tribunal should
9 hold that Japan was not at war with France from Sep-
10 tember, 1940, for either of the two reasons just con-
11 sidered, it is submitted that on March 9, 1945, Japan
12 initiated aggressive war against France and thereafter
13 waged such war against that nation. On March 9, 1945,
14 upon the failure of the Governor-General of Indo-China
15 to accept Japan's new demands, Japan began military
16 action.^{b.}

17 Count 24, charging the initiation of aggressive
18 war against Thailand, is established by paragraph G-140
19 of the Conspiracy. With respect to this Count, it is
20 also contended by the defense that since Japan immediate-
21 ly entered into an agreement with Thailand, the charge
22 has not been established. However, since Japanese troops
23 were landed in Thailand in pursuance of Japan's aggres-
24 sive purposes prior to the execution of the agreement
25 (I-8. b. Ex. 663, T. 7177-81; Ex. 664, T. 7183-91.)

1 and Thailand's consent was obtained only after the in-
2 vasion,^{c.} the contentions set forth with respect to
3 Count 23 are equally applicable to this Count.

4 (The aforesaid portion of the summation,
5 which was not read, is as follows:)

6 Count 25, charging initiation of aggressive war
7 against the Soviet Union, is established by paragraphs
8 H-96 to H-108, inclusive, of the Conspiracy.

9 Count 26, charging the initiation of aggressive
10 war against the Mongolian People's Republic, is estab-
11 lished by paragraphs H-109 to H-124, inclusive, of the
12 Conspiracy.

13 Count 27, charging the waging of aggressive war
14 against China since September 18, 1931, is established
15 by paragraphs D-17 to D-52, inclusive, of the Conspiracy.

16 Count 28, charging the waging of aggressive war
17 against China since July 7, 1937, is established by
18 paragraphs E-31 to E-66, inclusive, of the Conspiracy.

19 Count 29, charging the waging of aggressive war
20 against the United States, is established by paragraphs
21 G-141 to G-147, inclusive, of the Conspiracy.

22 Count 30, charging the waging of aggressive war
23 against the Philippines, is established by paragraphs
24 G-141 to G-147, inclusive, of the Conspiracy.

25 (I-8. c. T. 5353-7, 5692.)

1 Count 31, charging the waging of aggressive war
2 against Britain, is established by paragraphs G-140 to
3 G-147, inclusive, of the Conspiracy.

4 Count 32, charging the waging of aggressive war
5 against the Netherlands, is established by paragraphs
6 G-141 to G-146, inclusive, of the Conspiracy.

7 Count 33, charging the waging of aggressive war
8 against France, is established by paragraphs G-36, G-46,
9 G-172-3 of the Conspiracy. The remarks made with respect
10 to Count 23 are also applicable to this Count.

11 Count 34, charging the waging of aggressive war
12 against Thailand, is established by paragraph G-140 of
13 the Conspiracy. The remarks made with respect to Count
14 24 are also applicable to this Count.

15 Count 35, charging the waging of aggressive war
16 against the Soviet Union in 1938, is established by
17 paragraphs H-96 to H-108, inclusive, of the Conspiracy.

18 Count 36, charging the waging of aggressive war
19 against the Mongolian People's Republic and the Soviet
20 Union in 1939, is established by paragraphs H-109 to
21 H-124, inclusive, of the Conspiracy.

22 Count 39, charging murder at Pearl Harbor, is
23 established by paragraph G-141 of the Conspiracy.

24 Count 40, charging murder at Kota Bahru, is
25 established by paragraph G-140 of the Conspiracy.

1 Count 41, charging murder at Hongkong, is
2 established by paragraph G-145 of the Conspiracy.

3 Count 42, charging murder by reason of the
4 attack on HMS Beterel, is established by paragraph G-144
5 of the Conspiracy.

6 Count 43, charging murder in the Philippines,
7 is established by paragraph G-144 of the Conspiracy.

8 MR. HORWITZ: At this time, Colonel Mornane
9 will take up the matter of Conventional War Crimes and
10 Crimes Against Humanity.

11 THE PRESIDENT: Colonel Mornane.

12 COLONEL MORNANE: PRISONER OF WAR SUMMATION

13 J-1. This phase of the summation deals with
14 the facts relating to the crimes against humanity and
15 conventional war crimes charged in Counts 53, 54, and 55
16 of the Indictment. The law in regard to such crimes,
17 which will be hereafter referred to as war crimes, will
18 be discussed in the next succeeding phase of the sum-
19 mation.

20 J-2. In the prisoner of war summation argument
21 will be addressed to the Tribunal with a view to estab-
22 lishing that the war crimes of which evidence has been
23 given were in fact committed, and that they were com-
24 mitted in some cases as a part of the policy of the
25 Japanese Government, and that in the remaining cases the

1 Government was indifferent as to whether they were com-
2 mitted or not. The expression "Japanese Government" is
3 here used in a very wide sense as embracing not merely
4 members of the Cabinet but also senior officers of the
5 Army and Navy, ambassadors and senior career public
6 servants. Throughout the remainder of this phase of
7 the prisoner of war summation the expression will be so
8 used.

9 J-3. In this phase of the summation it is not
10 proposed to link the individual accused with the commis-
11 sion of, or other responsibility for, war crimes; that
12 will be done by counsel in making their addresses in
13 regard to the accused assigned to them.

14 J-4. As far as possible it is desired to avoid
15 subjecting the Tribunal to a repetition of the nauseating
16 details of the massacres, murders, tortures and other
17 almost inconceivable atrocities committed by the Japa-
18 nese on the high seas and in every area that they occu-
19 pied. With this end in view, and with the object of
20 assisting the Tribunal in its weighty task, summaries of
21 various phases of the evidence, which the prosecution
22 considers important, have been prepared and are annexed
23 to this address as Appendix "A" and Appendix "B". It is
24 not proposed to read these Appendices.
25

I shall now proceed to describe them briefly.

1 J-5. Appendix "A" sets out details of atrocities
2 committed by the Japanese on Chinese soldiers and civil-
3 ians in China and Manchuria between 1937 and 1945, and,
4 in addition, contains references to evidence showing the
5 means by which the Japanese Government did, or ought to
6 have, become acquainted with such atrocities.

7 J-6. Appendix "B" is divided into seven parts.

8 a. The first part consists of a Summary of the
9 evidence relating to treatment of prisoners of war,
10 civilian internees and inhabitants in occupied countries
11 other than the Philippines between December, 1941, and
12 September, 1945. In terms there appears to be some
13 overlapping with Appendix "A" but that is not so in
14 fact. Defense evidence contradicting or palliating the
15 commission of war crimes shown by the evidence for the
16 prosecution has been inserted in the appropriate place.
17 On the other hand this part ignores defense evidence re-
18 lating to camps or other places in respect of which no
19 evidence has been given by the prosecution. This has
20 been done on the basis of His Honor, the learned Presi-
21 dent's remark to the defense, "Meet the charges made
22 against you and do not try to prove that in other cases
23 where no charges were made, no faults could be found."^{a.}
24 It will be noticed that this part has been divided into
25 (J-6. a. T. 27474.)

1 divisions, each covering six months or thereabouts. That
2 has been done so that the Tribunal may readily correlate
3 the periods of public office or service command of
4 individual accused with the periods during which war
5 crimes were committed at particular places.

6 b. The second part consists of a Summary of
7 the prosecution evidence relating to treatment of
8 prisoners of war, civilian internees and inhabitants in
9 the Philippines between December, 1941, and September,
10 1945.

11 c. The third part consists of a Summary of
12 evidence relating to the treatment of prisoners of war
13 and civilian internees in the course of transportation
14 by sea. It covers the period from 7 December 1941 to
15 the end of the war.

16 d. The fourth part contains a Summary of
17 evidence of atrocities at sea, other than those relating
18 to transportation of prisoners of war, and protests re-
19 lating thereto. Here again the period covered is the
20 duration of the Pacific War.

21 e. The fifth part contains a Summary of the
22 documentary evidence as to Japanese assurances re the
23 application of Geneva Red Cross Convention 1929 and
24 Geneva Prisoner of War Convention 1929.

25 f. The sixth part consists of a Summary of

documentary evidence as to information received by the Japanese Government about the treatment of prisoners of war and civilian internees. It is divided into three divisions as follows: (1) Protests, (2) Transcripts of broadcasts, and (3) Japanese official documents authorizing or establishing the commission of War Crimes.

g. The seventh part sets out the ratio of prisoners of war who died or were killed to the number captured.

J-7. With regard to events and incidents described in Appendix "A", and Appendix "B", Parts 1, 2, 3, and 4, the defense has in very few instances denied or made attempts to disprove the prosecution's evidence. Even where this has been done it is not proposed to argue the matter in every case. Owing to the welter of uncontradicted prosecution evidence as to the commission of war crimes, it is only where they become very important, for some such reason as the close connection of one of the accused with them, that the merits of conflicting evidence will be argued in this phase of the summation. The only other attack that has been made by the defense on the evidence of the prosecution as to the commission of such war crimes takes the form of a confession and avoidance. An illustration of this is where the defense admits that prisoners in a certain area

1 suffered from starvation, or the lack of medical
2 supplies, but claims that this was unavoidable owing to
3 insufficiency of, or inability to use, transport for the
4 purpose of providing the necessary food or medicine.
5 Here again it is not proposed to argue the merits of
6 conflicting evidence, except in cases otherwise important.
7 In many cases the reply of the defense to prosecution
8 evidence of atrocities is that such things never
9 happened. For instance where a Chinese affidavit states
10 that in September, 1941, in Chen Tung Shih, Japanese of
11 the 6th Division plundered the countryside and massacred
12 200 inhabitants,^{a.} the defense reply to this is that
13 troops were instructed not to burn, kill or loot and
14 "in obedience to these orders of their superiors they
15 did not commit any deed which would be a disgrace to
16 their superiors."^{b.} Here no assistance can be given to
17 the Tribunal and it must make up its mind unaided by
18 anything the prosecution can say.

19 Cases of conflict between evidence of defense
20 and the evidence of the prosecution as to the actual com-
21 mission of war crimes:

22 a. Burma.
23
24
25

(J-7. a. Ex. 341, T. 4611.
b. T. 27496.)

1 J-8. In regard to the period between September
2 1944 and the end of the war, a great deal of evidence
3 was given by the Defense, but it relates mainly to
4 the responsibility of the accused KIMURA and the
5 state of knowledge of several of his high-ranking offi-
6 cers. This type of evidence will not be traversed
7 here, as we are now only concerned with the fact
8 whether war crimes were committed or not. On this
9 basis the only conflict is as to treatment of prisoners
10 of war at Rangoon Gaol. For the Prosecution evidence
11 was given that in March 1945, men dying of beri beri
12 and dysentery were left to die in a bare concrete cell
13 without bedding. Requests for strengthening food and
14 medical attention made to the medical officer and
15 orderlies on their behalf were refused on the ground
16 that they would die in any event. They did die.^{a.}

17 J-9. For the Defense two witnesses stated
18 that the prisoners of war camp at Rangoon Gaol was
19 equipped with dispensary, sick room, showers, etc.,
20 and that the equipment was in good condition. Both
21 admitted, however, that they had never seen the camp
22 until they themselves occupied it after the surrender.^{a.}
23 A statement of the Camp Commandant TAZUMI was also
24

25 J-8. a. Ex. 1583-A, T. 13102

J-9. a. T. 27540, T. 27545, T. 27585, T. 27592

exhibited. In it he said the camp was bare and poorly equipped with furniture and fixtures, medicine and equipment were lacking. Fresh vegetables and meat were available for the feeding of the prisoners.

J-10. It is submitted that the evidence of IKEJIRA and ICHIDA as to the condition of the camp must be rejected in favor of the eye-witness Hudson and TAZUMI. It also appears from TAZUMI's statement that strengthening food and medical attention, as opposed to medicine, was available. There is nothing to contradict the Prosecution's evidence that they were refused and therefore the Prosecution's version should be accepted.

b. SHANGHAI.

J-11. As to Shanghai, the only part of the Prosecution's evidence which is challenged is that relating to the period ending in October 1942. The Prosecution spoke of the lack of food, bedding, heat and medical supplies, and of the bad sanitation and general ill-treatment at the Woosung POW Camp and Bridgehouse Gendarmerie.

J-12. The Defense evidence comes from SAWADA and KUDO. The former was Commander of the 13th Army which occupied and controlled Shanghai. He held that appointment until October 1942. He gave evidence

J-11. a. Ex: 1893; T: 14165; Ex: 1900; 1901; T: 14178-2; 80
Ex: 1911; T: 14191; Ex: 1914; T: 14194; T: 3270-80

1 that the prisoners of war received compassionate, fair
2 and just treatment and that the Red Cross representa-
3 tive who visited the Woosung Camp in August 1942,
4 had told him that he was delighted with the conditions
5 obtaining there. ^{a.}

6 J-13. KUDO gave similar evidence as to the
7 views expressed by the Red Cross representative. ^{a.}

8 It is submitted that the evidence of prisoners who
9 were confined in these places and could speak with
10 first-hand knowledge of conditions should be accepted
11 in preference to that of a Red Cross man who makes
12 one visit to the camp or of a general who doesn't
13 even claim to have seen the Gendarmerie or the camp.
14 (To explain the views alleged to have been expressed
15 by the Red Cross representative, Japanese official
16 documents were introduced into evidence by way of
17 rebuttal. They show that the Red Cross visit to the
18 camp was deferred from April to August 1942, at the
19 urgent request of the Chief of Staff of the 13th Army
20 because the prison camp accommodation was unsatis-
21 factory and the mental attitude of the prisoners was
22 not reasonable. ^{b.} In other words, the camp was dressed
23 for inspection, and it looks as if the prisoners were
24

25 J-12. a. T. 27447

J-13. a. T. 27149-51

b. Ex. 3843, 3843A, 3843B, T. 38153-6

1 intimidated. This evidence gives the lie to SAWADA
2 who must have known of the official correspondence.)

3 c. KOREA

4 J-14. In respect of Korea no evidence was
5 given in the Prosecution's case, but the Defense put
6 in evidence Red Cross reports of visits to camps in
7 Korea on 18 December 1942 and in November-December,
8 1944.^{a.} These described the camps in favorable terms
9 but that of December 1944^{b.} went on to say that three
10 of the prisoners expressed their gratitude to the camp
11 officials and expressed their regret at having failed
12 to do so on the occasion of the previous Red Cross
13 visit. The attention of the Tribunal is invited to
14 the fact that this conversation was not read into the
15 record but forms part of the Defense evidence. It
16 appears on pages 6 and 7 of the Exhibit. The previous
17 Red Cross inspection had been made in November 1943
18 by a different representative.^{c.} To rebut the effect
19 of this report the Prosecution introduced an affi-
20 davit from one of the prisoners at the camp. He states
21 that during the November 1943 visit to the camp three
22 of the prisoners had made complaints to the Red Cross
23 representative and on the next day were sentenced to
24

25 J-14. a. Ex. 3308, T. 30174; Ex. 3310, T. 30190

b. Ex. 3310, T. 30190

c. Ex. 3140, T. 27949

d.
solitary confinement.

1 J-15. The three prisoners referred to in this
2 document are identical with those referred to as
3 expressing their regret in 1944 for having failed to
4 thank the camp staff during the previous Red Cross visit.
5 This shows that fear of punishment prevented persons
6 from making complaints.
7

8 d. TOKYO.

9 J-16. A large body of Prosecution evidence
10 was given as to the conditions in the Tokyo Group of
11 Prison Camps -- Yokohama, Kawasaki and Naeotsu.^{a.} The
12 prisoners at these camps suffered from starvation,
13 lack of medical supplies and attention, beatings and
14 other cruel punishments.
15

16 J-17. To rebut this, SUZUKI, who commanded
17 all camps in the Group, was called by the Defense and
18 gave evidence of the good treatment of prisoners and
19 particularly stressed the fact that good food was
20 provided for the sick. In cross-examination he ad-
21 mitted that he had knowledge of frequent beatings of
22 prisoners, that pursuant to an order of Eastern Dis-
23 trict Headquarters the rations of the sick had been
24 reduced by one-third and that he himself had authorized

25 J-16. a. Ex. 1942, T. 14246; Ex. 1948, T. 14253;
 Ex. 1926, T. 14223; Ex. 1952, T. 14258; T.14271-6.
 J-14. d. Ex. 3844, T. 38165

1 his staff to use Red Cross supplies intended for the
2 prisoners.^{a.} It is submitted that in this case the
3 Tribunal should have no hesitation in accepting the
4 Prosecution's evidence in its entirety.

5 Confession and Avoidance.

6 a. Singapore.

7 J-18. The Prosecution's evidence shows that
8 between the 21st and 23rd of February 1942, 5,000
9 Chinese, most of whom were civilians but many of whom
10 were members of the Straits Settlement Volunteers,
11 were taken from their families, coralled in areas
12 cordoned off by tanks, and executed without trial.^{a.}
13 Diary entries of the Japanese commander of the Singa-
14 pore Defense Forces show that on 19 February he issued
15 orders for the rounding up of undesirable Chinese as
16 from the 21st; that the roundup was completed by 22
17 February and that 5,000 of them had been executed by
18 11:00 a. m. on 23 February. These entries are broadly
19 confirmed by Diary of Imperial Headquarters which
20 under date of 21 February says "There are fairly many
21 volunteers and Malaysians who joined the enemy's force
22 as a volunteer army and the fifth column. The army
23 is now in search for them." An entry of 3 March

24 J-17. a. T. 27201-25

25 J-18. a. T. 5362, 5372, 5627-81; Ex. 476, T. 5624

1 states "Soon after the occupation we arrested and
2 executed about 5,000 delinquent persons at the first
3 clearing." b.

4 J-19. The Defense admits that the massacre
5 took place and that it was carried out on the orders
6 of General YAMASHITA. a. It, however, seeks to justify
7 it on the grounds that Chinese had hampered the Japan-
8 ese forces as they came down the Malayan peninsula
9 and as they attacked Singapore, and that since the
10 surrender on the 15th of February, Chinese had looted
11 surrendered arms, assassinated officers and men,
12 destroyed communications and transport lines, killed
13 and pillaged law abiding citizens. b.

14 J-20. It is submitted that this is no justi-
15 fication and that the massacre was a war crime. Not
16 one of the victims was tried and it is obvious, from
17 the number involved and the short time that elapsed
18 between their arrest and their murder, that no inves-
19 tigation of any description could have been held in all
20 cases. Further, under Articles 1 and 2 of the Hague
21 Convention the members of the Straits Settlement Vol-
22 unteers were entitled to bear arms against the Japan-
23 ese and upon their capture to be treated as prisoners
24

25 J-18. b. Ex. 476, T. 5624

J-19. a. T. 27401, 27408-9

b. T. 27400-1; Ex. 476, T. 27411

of war.

b. Singapore and other areas under control
of the 7th Area Army.

J-21. In common with POW in every other area occupied by the Japanese, prisoners and civilian
internees in Singapore, ^{a.} Java, ^{b.} Sumatra ^{c.} and ^{d.} Borneo suffered throughout their incarceration from lack of food and medical supplies. All of these areas were at that time under the control of 7th Area Army commanded successively in 1945 by the accused DOIHARA and ITAGAKI.

J-22. The Defense does not contest the truth of this evidence, but says that allied air and submarine attacks had rendered Japan unable to transport food and medical supplies, and therefore Japan's failure to adequately provide for prisoners and internees should not be regarded as a war crime. ^{a.} The Prosecution does not concede this. Prisoners and internees had been receiving inadequate rations and supplies in these areas long before allied attacks had affected Japanese ability to transport supplies. But were supplies as short as the Defense would have us believe?

J-21. a. T. 5420, 5491; Ex. 1512-7, T. 12914-30
b. T. 13537; Ex. 1712, T. 13629; Ex. 1720, 1721, 1722, T. 13644-6
c. Ex. 1769, T. 13784, Ex. 1778, T. 13820, T. 13471, 13474, T. 13573-9, T. 13576
d. Ex. 1655, 1656, T. 13312-3, Ex. 1668, T. 13420, Ex. 1673, 1674, 1675, T. 13446-9, T. 13355-62, 13369-72

At Singapore the Defense's own witness on this point admitted that there was six months' supply of rice on hand at the surrender. In addition there were the British food and medical supplies which had been captured at the fall of Singapore. They were still in stock.^{b.} Further evidence of this has been given in the Prosecution's case.^{c.} True it is that the Defense claims that it was necessary to hold these supplies on hand for future operations.^{d.} As to this, the Prosecution submits that international law is paramount, that one who makes it bow to operational necessity commits a war crime.

J-23. In Borneo most of the camps to which reference was made earlier had been wiped out by the massacre or starvation of their prisoner occupants, but at the sole remaining one, Kuching, 50 cases of medical supplies were handed over by the Japanese on the day of the arrival of the allied relief team.^{a.}

J-24. Similarly with regard to Java, at Bandoeng^{a.} and Tjimaki^{b.} large supplies of medical and Red Cross goods were made available, while at Tjideng

- J-22. a. T. 30199-202; Ex. 3312, T. 30220-3
 b. T. 30202, 30212
 c. Ex. 1513, T. 12914, Ex. 1516, T. 12930
 d. Ex. 3312, T. 30220
J-23. a. Ex. 1675, T. 13449-52
J-24. a. Ex. 1712, T. 13629
 b. Ex. 1721, T. 13646

1 ample supplies of food were brought into the camp
2 from the surrounding district where there had been^{c.}
3 no shortage during the preceding six months.

4 In Sumatra too, adequate food and medical supplies^{d.}
5 were provided after the surrender.

6 J-25. Finally in November 1942, the
7 British had offered to send a ship from Australia
8 with supplies for prisoners of war, but this offer^{a.}
9 was rejected. Surely this would suggest to the
10 Japanese a means of saving the lives of their war
11 prisoners.

12 J-26. On the whole of the evidence it is sub-
13 mitted that the Tribunal should reject the Defense's
14 contention that the circumstances were beyond her con-
15 trol and should find that the failure to properly
16 provide for prisoner and internees in these areas was
17 a war crime.

18 c. Burma-Thailand Railway.

19 J-27. From August 1942 onward, prisoners of
20 war were dispatched from Singapore and the Netherlands
21 East Indies to Burma and Siam to construct a railway
22 line from Kanchanburi in Thailand to Thanbuzayat in
23

24 J-24. c. T. 13537 et seq.

d. T. 13474; T. 13573-9

25 J-25. a. T. 27153

1 Burma for the purpose of supplying Japanese troops
2 in Burma who were preparing to invade India. The total
3 distance was about 400 kilometres and the greater part
4 of that was over virgin mountainous jungle, and it
5 was built from each end at the same time. In all,
6 about 46,000 prisoners of war were employed and of
7 these, 16,000 died in a period of eighteen months from
8 starvation, disease and ill-treatment.^{a.} Japanese
9 sources place the maximum number of prisoners em-
10 ployed at 49,776 and the deaths at 7,746.^{b.} In addi-
11 tion, from 120,000 to 150,000 Indonesians, Burmese,
12 Chinese and Malaysians were employed and their death
13 roll from the same causes was estimated at 60,000 to
14 100,000.^{c.} The Prosecution's evidence that the line
15 was being constructed for operational reasons is
16 corroborated by Japanese documents that came into
17 existence in 1944. Thus in a report dated 6 October
18 1944 from Chief of Staff, Southern Army, to the Chief
19 of Prisoner of War Information Bureau, the following
20 statement appears:

21 "... For strategic reasons the completion of
22 this railway was most urgent. Since the proposed site
23 of this railway line was a virgin jungle, shelter,
24

25 J-27. a. T. 5415, 5434-41
b. Ex. 473, T. 5492
c. T. 5415, 5434-41

1 food, provisions and medical supplies were far from
2 adequate and much different from normal conditions
3 for prisoners of war..."

4 A communication received on 4 October 1944
5 at the same Bureau from the Chief of Prisoner of War
6 Camps in Siam states (inter alia) "At that time
7 (i.e. during construction of railway), provisions and
8 rations were scarce. Quarters and establishments were
9 poor and medical facilities were inadequate. Moreover,
10 for strategic reasons, it was necessary to complete
11 the railway by August 1943 and the work was pushed
12 forward at a terrific rate, with the result that many
13 prisoners of war became ill and many died." ^{d.}

14 J-28. There is ample prosecution evidence to
15 show that the deaths of prisoners were due to ill-
16 treatment, excessive labor, starvation, disease and
17 medical neglect. ^{a.}

18 J-29. A comparison of the death rate among
19 prisoners as opposed to that among their guards shows
20 that "F" Force, which was 7,000 strong and was guarded
21 by 250 Koreans and 30 to 40 Japs, lost 3100 men in a
22 period of 7 months from April 1943 onward, while only
23 one of the guards died. "A" Force had 900 deaths

24 J-27. d. Ex. 473, T. 5492

25 J-28. a. T. 11411-41, 11478, T. 13000-11, T.13020-35,
Ex. 1561-70, T. 13054-78
Ex. 1574-5, T. 13083-7, Ex. 1580, T. 13098

• whereas only four of its guards died and one of these
1 was a suicide.

2 J-30. "F" Force and "H" Force arrived in
3 Thailand from Singapore in April and May 1943 respect-
4 ively, the latter force was 3,000 strong and had a
5 death roll of 900 in seven months.
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J-30. a. T. 5434, 5439-41

1 J-31. The decision to construct the railway
2 was made by Imperial General Headquarters in response
3 to a request from Southern Army Headquarters.^{a.} Sub-
4 sequently, in February 1943, Imperial General Head-
5 quarters decided for operational reasons to speed up
6 the construction by four months but later extended
7 the new period two months.^{b.} The result was that the
8 line was completed in October 1943, two months earlier
9 than was originally planned.^{c.} The defense does not
10 deny the facts generally, but attributes the death-
11 rate to the early onset of the rainy season preventing
12 the transportation of supplies;^{d.} it says that the
13 Southern Army Commander realizing that the success of
14 the construction depended upon sanitation, sent
15 medical teams to the area to study and improve the
16 sanitary conditions, to investigate malaria with a
17 view to controlling it, and to purify water supplies.
18 The Southern Army Headquarters had been advised by
19 its medical officers of the grave danger of the
20 prisoners contracting diseases, and from the end of
21 1942 onward of the growing death rate among them.^{e.}

22
23 J-31.

24 a. T. 14633.

25 b. Ex. 475, T. 5513.

c. T. 5437.

d. Ex. 475, T. 27412-24, T. 27746.

e. T. 27746.

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J-31. The decision to construct the railway was made by Imperial General Headquarters in response to a request from Southern Army Headquarters.^{a.} Subsequently, in February 1943, Imperial General Headquarters decided for operational reasons to speed up the construction by four months but later extended the new period two months.^{b.} The result was that the line was completed in October 1943, two months earlier than was originally planned.^{c.} The defense does not deny the facts generally, but attributes the death rate to the early onset of the rainy season preventing the transportation of supplies;^{d.} it says that the Southern Army Commander realizing that the success of the construction depended upon sanitation, sent medical teams to the area to study and improve the sanitary conditions, to investigate malaria with a view to controlling it, and to purify water supplies. The Southern Army Headquarters had been advised by its medical officers of the grave danger of the prisoners contracting diseases, and from the end of 1942 onward of the growing death rate among them.^{e.}

J-31.

a. T. 14633.

b. Ex. 475, T. 5513.

c. T. 5437.

d. Ex. 475, T. 27412-24, T. 27746.

e. T. 27746.

J-32. Even if this were so, if the Japanese had exercised every care and the deaths were solely attributable to the unexpected onset of the rainy season, they would in the circumstances have committed a war crime. Southern Army Headquarters had no right to send prisoners of war to work in an area which it knew to be gravely dangerous to health, and further, it had no right to employ prisoners on the construction of a railway line to be used for military purposes. There can be no doubt that it was the intention of the Japanese, at that time, to use the line solely for military purposes, to supply and reinforce their troops in Burma. This is obvious from the Japanese documents quoted^a and from the dictates of common sense.

J-33. But it was clearly not the rainy season that caused the deaths although it may have increased them; as early as March and April, even on the Japanese figures, the monthly death roll already exceeded 200.^a If the rainy season had then already commenced, why send "F" and "H" forces there at the end of April and in May as was done.^b

J-34. Further, the deaths were almost

J-32.

a. Ex. 473, T. 5492.
Ex. 475, T. 5513.

J-33.

a. Ex. 473, T. 5492.
b. T. 5439-40.

entirely limited to the prisoners of war. You will recall that there were five deaths among the Japanese guards in comparison with 4,000 among the prisoners in "F" and "A" forces in seven months.^a.

J-35. It follows that the deaths among the prisoners were due to the fact that they were subjected to conditions to which the Japanese were not subjected. They died from ill-treatment, excessive labor, and unnecessary medical neglect and starvation.

J-36. It is submitted that the defense has in no sense justified the conduct of the Japanese authorities with regard to the Burma-Thailand Railway.

J-37. d. Bataan Death March. A rather half-hearted attempt was made to justify the Bataan Death March on the grounds that it was unavoidable as neither transport nor food was available.^a.

J-38. Even if that were true it would not justify the treatment meted out to the marching prisoners; throughout a nine-day march, over 120 kilometers under a blazing sun, about 65,000 American and Filipino prisoners were kicked and beaten by their guards, the only drink they had was water from caribou

J-34.

a. T. 5439-40.

J-37.

a. T. 27764-5.

1 wallows, the only food, that which was thrown to them
2 by Filipinos. Those who through illness or fatigue
3 fell out of the march were shot or bayoneted.^a

4 J-39. But even the claim as to lack of
5 transport is met by irrefutable evidence in the form
6 of an affidavit made by Major-General King, the
7 Commanding General of the American Forces at Bataan.
8 He says, "In destroying arms and equipment in prepara-
9 tion for surrender, I had reserved enough motor
10 transportation and gasoline to transport all my
11 troops out of Bataan. I pleaded, after my surrender,
12 that this be done, offering to furnish personnel as
13 might be required by the Japanese for this purpose. . .
14 The Japanese told me that they would handle the move-
15 ment of the prisoners as they desired, that I would
16 have nothing to do with it, and that my wishes in
17 that connection could not be considered."^a It is
18 submitted that the hearsay defense evidence should be
19 rejected in favor of the affidavit of General King.
20 In any event, it affords no justification for the
21 barbarous conduct of the Japanese throughout the March.

22 J-40. I now proceed to the main part of the

23 J-38.

24 a. T. 12579-91, T. 12741-3, T. 12610-8.

25 J-39.

a. Ex. 1448, T. 12595.

1 summation, to establish that the war crimes, which
2 we submit have been proved, were in some cases com-
3 mitted as a matter of definite government policy and
4 that in other cases the Government was indifferent
5 as to whether they were committed or not.

6 J-40A. For this purpose the subject matter
7 will be dealt with under the following heads:

8 (i) Reasons for nonratification of Geneva
9 Prisoners of War Convention 1929;

10 (ii) Assurances given by the Japanese
11 Government as to application of conventions;

12 (iii) Knowledge of Japanese Government of
13 the commission of war crimes by its nationals;

14 (iv) Amendments of Japanese law since
15 7 December 1941 so as to authorize breaches of the
16 Hague Convention 1907 and/or the Geneva Prisoners of
17 War Convention 1929;

18 (v) Similarity of pattern of war crimes
19 committed throughout Japan and areas occupied by the
20 Japanese.

21 J-41. Reasons for nonratification of Geneva
22 Prisoner of War Convention 1929. The defense has pro-
23 vided us with the starting point of our argument.
24 Japan had signed the Geneva Prisoner of War Convention
25 1929 and in 1934 the question arose as to whether the

1 Emperor should ratify it. The Army and Navy petitioned
2 against ratification, the Navy supplying reasons for
3 its petition.^a.

4 J-42. As the document embodying these
5 reasons was introduced by the defense it must be
6 assumed that the defense has adopted them as the
7 Government's reasons for nonratification of the
8 Convention. They may be paraphrased as follows:

9 (a) The obligations are unilateral since no Japanese
10 would become a prisoner of war, (b) Art. 86 enabling
11 protecting powers to interview prisoners of war with-
12 out observers would be dangerous to military security,
13 (c) The ratification of the Convention would double
14 the range of enemy aircraft as, having completed
15 their mission the crew could land on Japanese terri-
16 tory secure in the knowledge that they would be well-
17 treated. (d) Prisoners of war could not be so
18 severely punished as Japanese soldiers, and this would
19 involve a revision of Japanese Military and Naval
20 Disciplinary Codes to put them on an equal footing,
21 a revision which was undesirable in the interests of
22 discipline.^a.

23 J-41.

24 a. Ex. 3043, 3044, T. 27177-81.

25 J-42.

a. Ex. 3043, T. 27177.

1 J-43. The objection that the obligations
2 would be unilateral applies equally to the Hague
3 Convention which Japan had already ratified and
4 therefore it may be disregarded in our search for
5 the Government's intentions. The obligation contained
6 in Article 86 is a qualified one -- thus it provides
7 for representatives of Protecting Powers interviewing
8 prisoners and says "they may interview them, as a
9 general rule, without witnesses" -- and that must
10 mean that the belligerent holding the prisoners can
11 make exceptions to that general rule. In those
12 circumstances there can be no real risk of the
13 prisoner disclosing anything inimical to security.
14 Therefore, this reason also may be disregarded.

15 J-44. It will be submitted hereafter, in
16 the legal phase of this Prisoner of War Summation,
17 that as a matter of law there is no practical differ-
18 ence between the Hague and the Geneva Conventions,
19 that of 1929 merely making explicit what is implicit
20 in the declaration contained in the Preamble to the
21 Hague Convention, 1907. Japan, of course, could not
22 have adopted that view in 1934 because, had she done
23 so, there would have been no point in her refusal to
24 ratify the 1929 Convention.
25

J-45. The only penal provision of the Hague

Convention relevant to our present purpose is
1 Article 8. This corresponds almost in terms with
2 Articles 45 and 50 of the Geneva POW Convention 1929
3 and so in that respect the two Conventions may be
4 said to cancel out each other. The only other
5 material provisions restrictive of punishment in
6 the Geneva Convention are those contained in Article
7 46 -- "Any corporal punishment, any imprisonment in
8 quarters without daylight and, in general, any form
9 of cruelty is forbidden. Collective punishment for
10 individual acts is also forbidden."
11

12 J-46. It was therefore these restrictions
13 that the Japanese Government wished to avoid; it
14 wished to preserve the right to ill-treat prisoners
15 under the guise of punishment and so to deter airmen
16 from raiding the country. The ill-treatment of
17 prisoners was to be a matter of government policy.

18 J-47. Assurances given by the Japanese
19 Government that they would apply the Geneva POW
20 Conventions 1929 "mutatis mutandis" and the variation
21 in meaning given to that expression.
22

23 Shortly after the outbreak of the war with
24 Japan, the Governments of United States and Great
25 Britain informed the Japanese Government through their
Protecting Powers that they proposed to observe the

1 provisions of the Geneva POW Convention 1929, and
 2 sought assurances that Japan would likewise observe
 3 such provisions.^a At about that time Great Britain
 4 also stated that she would observe national and
 5 racial customs of prisoners as regards food and
 6 clothing.^b Shortly after this a similar declaration
 7 was made by the United States of America.^c

8 J-48. The Japanese Foreign Ministry sought
 9 the advice of the War Ministry. After several con-
 10 ferences had been held at the War Ministry, the Vice-
 11 Minister of War replied that "it would be safe to
 12 notify the world that we have no objection to acting
 13 in accordance with the Convention (i.e. Geneva POW
 14 Convention 1929) in the treatment of prisoners of
 15 war, and that as regards food and clothing, we have
 16 no objection to giving due consideration to the
 17 national or racial habits and customs of prisoners."^a

18 J-49. On 29 January 1942, TOGO as Foreign
 19 Minister notified the respective Protecting Powers
 20 that Japan although not bound by Geneva POW Convention
 21 1929 would "apply mutatis mutandis the provisions of

22 J-47.

- 23 a. Ex. 1468, T. 12787; Ex. 1494, T. 12879.
 24 b. Ex. 1495, T. 12880.
 25 c. Ex. 1492, T. 12789.

J-48.

- a. Ex. 1958, T. 14299.

the said Convention" to prisoners in its hands.^a

J-50. Japan also notified the Protecting Powers that she would "consider, on conditions of reciprocity, the national and racial customs of prisoners as to food and clothing."^a

J-51. On 13 February 1942, Japanese Foreign Ministry notified Protecting Power that she would apply provisions of Geneva POW Convention 1929 to "enemy civilian internees, in so far as they are applicable and provided that they are not made to work without their consent."^a

J-52. The original assurances of Japan's intention to observe the Convention "mutatis mutandis" were despatched under the hand of TOGO. In the course of his evidence he said, ". . . I assumed (and still assume) that we were binding ourselves only to apply the Convention so far as circumstances permitted. 'Mutatis mutandis,' then, I supposed to imply that in the absence of serious hindrances the Convention would be applied; I assumed also, although this was only assumption on my part, that when the requirements of

J-49.

a. Ex. 1490, T. 12878.
Ex. 1496, T. 12882.
Ex. 1956, T. 14295.

J-50.

a. Ex. 1493, T. 12879.
Ex. 1496, T. 12882.
Ex. 1956, T. 14295.

J-51.

a. Ex. 1491, T. 12878.

1 the Convention came into conflict with the provisions
2 of domestic law, the former would prevail."^a.

3 J-53. MATSUMOTO, Shun-Ichi, who was employed
4 in the Bureau of Treaties from 1940 to October 1942,
5 says, "It was the intention of Japan with respect to
6 the treatment of prisoners of war that the stipula-
7 tions of the Geneva Convention be applied so far as
8 the circumstances permitted; in other words, unless
9 there were hindrances or obstacles which made its
10 application impracticable."^a.

11 J-54. TOGO did not consider that Japan was
12 getting nothing in return for her promise to apply
13 the Geneva POW Convention 1929 and to extend its pro-
14 visions to interned civilians. To a War Minister,
15 feebly believing that no Japanese soldier would ever
16 surrender, it may have appeared that Japan was taking
17 on her shoulders heavy obligations without a chance
18 of deriving any corresponding advantage, but it was
19 not so to a Foreign Minister. There were some hundreds
20 of thousands of Japanese civilians in allied terri-
21 tories, and it was part of TOGO's duty to ensure their
22 comfort and safety.^a The same policy is seen in

23 J-52.

24 a. T. 35769-0.

J-54.

a. Ex. 3030, T. 27133.

25 J-53.

a. Ex. 3030, T. 27136.

December 1943 when the Chief of the Information Bureau at the War Ministry sent out Censorship Instructions to all units. Any reports giving an impression of cruel treatment, such as prisoners being punished or being made to labor without clothing were to be censored. The reason given was that "care should be taken to avoid issuing twisted reports of our fair attitude which might give the enemy food for evil propaganda and bring harm to our interned brothers."^b Japan was getting a real and valuable return for her undertaking. Whether she, on her part, abided by the Convention or not, she was anxious to have the world believe that she was applying its provisions to the allied nationals in her power.

J-55. On 15 December 1942 an inquiry was made by the Swiss Minister as to the conditions under which American prisoners of war were used as laborers.^a

J-56. The Foreign Office reply dated 28 January 1943 stated that they were employed in the spirit of decision to apply POW Convention 1929 "mutatis mutandis" in labor which was not dangerous.^a No reference is made in the Hague Convention to

J-54.

b. Ex. 1977, T. 14539.

J-56.

a. Ex. 2025 (2),
T. 14833.

J-55.

a. Ex. 2025 (1), T. 14833.

dangerous work, but that expression does appear

1 under the heading of "Prohibited Labor" in Article
2 32 of the Geneva POW Convention 1929. At this stage
3 Japan is anxious to make it appear that she is abiding
4 by the 1929 Convention and she admits that the employ-
5 ment of prisoners in labor that was dangerous would
6 be a breach of that Convention applied "mutatis
7 mutandis."

8 J-57. In March 1944 the Swiss Minister
9 advises the Japanese Foreign Minister that he has
10 obtained evidence that prisoners of war have been
11 obliged to perform humiliating work in public and
12 that this is contrary to Article 2 of the 1929
13 Convention.^a The reply is that Japan is not bound
14 by the POW Convention 1929 but that it is the policy
15 of the Government based on humanitarian reasons to
16 protect prisoners of war from insult.^b Evidently
17 the Swiss Minister has previously sought and obtained
18 from the Japanese a definition of applying the 1929
19 Convention "mutatis mutandis" because after acknow-
20 ledging receipt of the last mentioned letter he goes
21 on to say, "The Legation remarks that the communica-
22 tion, according to which the Imperial Government would
23 not be bound by the Geneva Convention, does not appear
24 J-57.
25 a. Ex. 2025 (5), T. 14834. b. Ex. 2025(6), T. 14834.

1 to coincide with the previous declarations under
2 which Japan promised to apply to Prisoners of War
3 in its power the provisions of that Convention
4 mutatis mutandis, that is to say, in a measure that
5 will not conflict with the text of the Japanese law.
6 In order to overcome any misunderstanding on the
7 application of the Geneva Convention, the Federal
8 Government, in a letter from the Swiss Minister to
9 H. E. Mamoru SHIGEMITSU of 26 February, expressed a
10 desire to obtain as soon as possible full particulars
11 as to the articles of the Prisoner of War Code which
12 the Japanese Government considers inapplicable by
13 reason of internal legislation."^c It is apparent
14 that Japan through SHIGEMITSU has made a departure
15 from the meaning originally given to the application
16 of the Convention "mutatis mutandis"; it no longer
17 means that "in the absence of serious hindrances the
18 Convention would be applied;"^d it now means that it
19 will be applied only in so far as it does not conflict
20 with Japanese domestic law. TOGO's view that "where
21 the requirements of the Convention came into conflict
22 with the provisions of domestic law, the former would
23 prevail" has been jettisoned.^e

24 J-57.

25 c. Ex. 2025 (7), T. 14834.

d. T. 35769-70.

e. T. 35769-70.

J-58. By this time the Japanese have
1 decided to modify their application of the Convention
2 still further. On 28 April 1944, the Japanese Foreign
3 Ministry replies to protests lodged a considerable
4 time before in relation to treatment of American
5 prisoners of war. In the course of reply it says,
6 "By the above mentioned intention of the Japanese
7 Government to apply 'mutatis mutandis' the provisions
8 of 1929 Convention relating to prisoners of war to
9 American prisoners of war it is meant that the pro-
10 vis/ons of the Convention will be applied with the
11 modifications necessary in order to conform with the
12 provisions of existing laws and regulations of the
13 country and with the requirements of the actual
14 situation as it develops."^a. Thus we see that a
15 still further limitation has been given to the meaning
16 of applying the Convention mutatis mutandis. It has
17 now come to mean that the Japanese will apply it when
18 and to the extent that they see fit.

J-59. The policy of the Japanese Government
21 herein is clearly illustrated -- it is to ensure good
22 treatment for its own prisoners and internees by
23 falsely undertaking to apply the Convention; it is to
24 refrain from applying the Convention when it suits
25

J-58.

a. Ex. 2024 (4), T. 14827.

1 the Government. The advantages derived by failing to
2 apply the Convention will be discussed hereafter.

3 Knowledge of the Japanese Government that
4 War Crimes Had Been and Were Being Committed.

5 J-60. The fact that a Government knows that
6 its nationals have committed and are committing war
7 crimes, coupled with the fact that it makes no real
8 attempt to prevent their continuance, is very cogent
9 evidence of the fact that such crimes were and are
10 being committed as part of the Government's policy or
11 that the Government is quite indifferent as to whether
12 they are committed or not.

13 The purpose of this part of the summation
14 is to show that:

15 (a) The Japanese Government acquired
16 knowledge of the rape of Nanking, and thereafter it
17 had reason to be on its guard against the repetition
18 of war crimes by the Japanese Forces throughout the
19 fighting in China and the Pacific War;

20 (b) It acquired knowledge of the commission
21 of other war crimes prior to the outbreak of the
22 Pacific War;

23 (c) It acquired knowledge of the commission
24 of war crimes in almost every theater of the Pacific
25 War.

The Rape of Nanking.

J-61. When Nanking fell on 13 December 1937 all resistance by Chinese Forces within the city ceased.^{a.} The Japanese soldiers advancing into the city indiscriminately shot civilians on the street.^{b.} Once the Japanese soldiers had obtained complete command of the city, an orgy of rape, murder, torture and pillage broke out and continued for six weeks. During the first few days over 20,000 persons were executed out of hand by the Japanese.^{c.} The estimates of the number killed in and around Nanking within six weeks vary from 260,000 to 300,000, all of whom were brutally murdered without trial.^{d.} The accuracy of these estimates is indicated by the fact that the records of the Red Swastika Society and the Tsung-Shan-Tong shows that these two organizations between them buried over 155,000 bodies.^{e.} During this same period of six weeks not less than 20,000 women and girls were raped by Japanese soldiery.^{f.}

J-62. The defense does not deny the fact of atrocities having taken place at Nanking but it suggests

J-61.

- a. T. 2533, 2559, 2628, 3894.
- b. T. 2562.
- c. Ex. 328, T. 4569.
- d. Ex. 324, T. 4537; Ex. 327, T. 4542.
- e. Ex. 324, T. 4537-9.
- f. Ex. 329, T. 4569.

that a number of the atrocities were committed by retreating Chinese soldiers.^a It also refers to the punishment of those who had committed war crimes by Court Martial.^b The number of these must have been very few as TSUKAMOTO, Koji, the Prosecutor and Judge for the Central China Expeditionary Forces, said that he handled only ten cases.^c

J-63. There is ample evidence that the accused MATSUI, who at that time commanded the Central China Expeditionary Force, knew of the atrocities committed at Nanking.^a Many reports of atrocities were made to Japanese diplomatic officials in China and these were forwarded by them to the Foreign Office.^b The Foreign Office forwarded the reports to the War Ministry and the fact of the atrocities having been committed was discussed with War Ministry representatives at Liaison Conferences.^c A whole series of reports, one of them containing a report of over 70 cases of rape, were sent to the Foreign

J-62.

- a. Ex. 328, T. 21474.
- b. Ex. 349^a, T. 33822; Ex. 257, T. 3464-5.
- c. T. 21579.

J-63.

- a. Ex. 257, T. 3452; Ex. 255, T. 3552-3, T. 33089, 33849.
- b. T. 21453, 29970, 3505-6; Ex. 323, T. 4509-36, T. 2661; Ex. 328, T. 4558.
- c. T. 29970-2.

1 Minister, the accused HIROTA.^{d.} MINAMI, who was
2 Governor-General of Korea at the time, had read
3 reports about the rape of Nanking in the press.^{e.}
4 There can be no doubt that the rape of Nanking and
5 the atrocities that occurred there were very well
6 known in official Japanese circles. Foreign news-
7 paper accounts of the atrocities in Nanking and
8 Shanghai were also referred to in the Budget Committee
9 of the House of Peers on the 16th of February 1938.
10 The accused KIDO was present.^{f.}

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23 J-63.

24 d. T. 29977-85.

e. T. 20015.

25 f. Ex. 3342, T. 31515, Ex. 3737, T. 37285, T. 31486.

Knowledge of Atrocities Subsequent
To the Rape of Nanking, but Prior to the
Pacific War.

J-64. In October 1938 Japanese forces entered Hankow. On the morning following the entry captured Chinese were kicked or thrown into the Yangtze River and shot; in the streets of Hankow were seen the bodies of six or seven Chinese with their hands wired behind them; they had all been killed by shooting.^a The defense claims that no atrocities were committed at Hankow.^b Of the defense evidence, that of YOSHIKAWA^c may be disregarded entirely, as the Japanese entered the city on 27 October and he did not arrive there until the 29th, one day after the incidents deposed to by the eye-witness Dorrance;^d as to KIKKAWA, he merely says that the triumphal entry into Hankow was carried out in perfect peace and order, and as a consequence he believed that the troops who entered the city in this manner could not have committed violence or any other questionable deeds.^e This, of course, proves nothing, especially as to what happened on the following day. YOSHIKAWA's evidence, it is submitted, is equally valueless; it amounts to this: Orders had been given

J-64

a. T. 3392-6

b. T. 21585, 21588-9,
21595-6.

c. T. 21595-6

d. T. 3392-6

e. T. 21584.

1 to the troops to preserve strict discipline and the
2 city was entered in a peaceful manner, therefore "it
3 is inconceivable that the Japanese Army could have
4 committed assaults, looting, rapes and other brutal
5 acts."^f Nothing has been produced to justify the
6 Tribunal in rejecting Dorrance's account.^g

7 J-65. There is no evidence of the atrocities
8 at Hankow having been brought to the notice of the
9 Japanese Government, but there is evidence that
10 shortly after this the Japanese Government was aware
11 of atrocities having been committed in many places by
12 their armies in China. On 15 February 1939 the Vice
13 Minister of War sent to the Japanese Armies in Japan,
14 Korea, Formosa and China, a memorandum instructing
15 that men returning from the Chinese Incident Army
16 should be properly controlled so that they should not
17 reveal the state of affairs existing there. An enclos-
18 ure sets out the type of revelation they should not
19 make and gives instances of such revelations having
20 been made. To quote a few: "One company commander
21 unofficially gave instructions for raping as follows:
22 'In order that we won't have problems, either pay them
23 money or kill them in some obscure place after you
24 have finished.'" "If the army men who participated
25 in the war were investigated individually they will

J-64. f. T. 21588-9
g. T. 3392-6

probably be all guilty of murder, robbery or rape."

1 "The prisoners of the Chinese Army were sometimes
2 lined up in one line and killed to test the efficiency
3 of the machine gun."^a It is important to notice that
4 the direction is to prevent the men from talking about
5 these things; there is no direction to prevent such
6 things from happening.

7 J-66. Further evidence of atrocities having
8 been brought to the notice of the Japanese Government
9 is contained in a report dated 14 October 1941, from
10 the Chief of Staff of the South China Expeditionary
11 Forces to Vice-Minister of War KIMURA. It reports the
12 murder of a French missionary and 24 natives by a
13 Japanese naval force engaged on a punitive expedition
14 against Pown City on Hainan Island.^a The document
15 had been referred to various sections in the War Min-
16 istry, and then sent to the Foreign Ministry. Possibly
17 the Army may not have been so willing to circulate it,
18 had it not related to the Navy. Be that as it may,
19 it provided an additional reason why the Japanese
20 Government should have been on its guard against the
21 commission of war crimes during the Pacific War.
22

23 J-65.

24 a. Ex. 3304, T. 30127

25 J-66.

a. Ex. 3366, T. 31785

Knowledge of War CrimesDuring the Pacific War.

J-67. The three main documentary sources from which the prosecution alleges that the Japanese Government obtained knowledge of the commission of war crimes by its nationals during the Pacific War are as follows:

(i) Protests lodged by Protecting Powers on behalf of belligerents:

(ii) Transcripts of recordings of broadcasts made from America and Great Britain during the Pacific War;

(iii) Official Japanese documents which constituted evidence of, or a direction to commit, war crimes.

Protests made by Protecting Powers to the Japanese Foreign Ministry and the Attitude of the Japanese Government to the facts disclosed in the protests as indicating that war crimes were committed as a part of a definite government policy or that the Japanese Government was indifferent to their commission.

J-68. The details of the more important protests have been summarized in Part IV and Part VI of Appendix "B". Those in Part IV have been correlated with a summary of the evidence of the crimes which gave

1 rise to the protests.

2 J-69. Owing to the destruction of Japanese
3 documents at the time of the Japanese surrender,^a it is
4 impossible to trace each protest from the Foreign Office
5 to the various Japanese Ministries and Army or Navy
6 organizations to which it was sent. Evidence that
7 has been given, however, enables us to get a general
8 picture of the manner in which protests were handled
9 after being received by the Foreign Ministry.

10 J-70. Most of the protests had references to
11 prisoners of war held by the Army. Copies of these
12 with translations attached were sent to all Sections
13 in the War Ministry concerned with the subject matter,^a
14 and at times, depending on the nature of the protest,
15 copies were also sent to other Ministries, such as
16 Navy, Home Affairs, Justice, etc.^b At the War
17 Ministry any protests received were discussed at the
18 bi-weekly conference between the Minister, Vice-Minister
19 and the Bureau Chiefs.^c After this they were forwarded
20 by the Prisoner of War Information Bureau to the Army
21

22 J-69.

a. Ex. 2000, T. 14699

23 J-70.

24 a. T. 12833

b. T. 15516-28; Ex. 2173, 2174, T. 15513-4

25 c. T. 14288; Ex. 1980D, T. 14564

1 Commander of the area in which the grounds of the
2 protest had arisen and also to the Chief of Prisoner
3 of War Camps in that area.^d

4 J-71. Upon information being received from
5 the last mentioned sources a reply would be prepared
6 in the Military Affairs Section of the Military Affairs
7 Bureau and forwarded to the Foreign Office.^a

8 J-72. From various documents in evidence
9 it would appear to have been the practice to give
10 protests and other documents originating with the
11 Protecting Powers a fairly extensive circulation in
12 the War Ministry; in addition the Foreign Ministry
13 would frequently send duplicates of the protests to
14 the Prisoner of War Information Bureau as well as to
15 the War Ministry.^a

16 J-73. Considered purely as a matter of
17 machinery, no fault can be suggested with regard to
18 this system. But it is not enough for the Japanese
19 Government to pay lip service to its obligations under
20 International Law. The Tribunal will recall that the

21 J-70.

22 d. Ex. 473, T. 5492; Ex. 1980C, T. 14561

23 J-71.

24 a. T. 14287-8

25 J-72.

a. T. 27158-9; Ex. 473, T. 5492;
Ex. 3529, T. 34426;
Ex. 3367A, T. 31790

1 Japanese Government was already well informed of the
2 barbarous manner in which the Japanese forces custom-
3 arily behaved. The proof of that has already been
4 adverted to in this summation. The prosecution contends
5 that the very nature of the protests, coupled with the
6 supporting evidence that accompanied them, and the
7 replies made by field commanders to the Prisoners of
8 War Information Bureau, insofar as such replies are
9 in evidence, made it perfectly clear to the War Ministry
10 and the Foreign Office that war crimes had been and were
11 being committed and yet no effective steps were taken
12 to stop them. It is therefore submitted that they
13 were allowed to continue as a matter of government
14 policy or as matters to which the Japanese Government
15 was indifferent.

16 To establish these propositions it is now
17 proposed to discuss certain series of protests.

18 a. Rangoon.

19 J-74. On 8 July 1942 the Swiss Minister
20 forwarded to TOGO, the then Foreign Minister, a protest
21 regarding the treatment of British troops in Rangoon.
22 It was accompanied by the most cogent and unassailable
23 evidence of the truth of the facts contained in the
24 protest. On 23 June 1942 the "Japan Times and Advertiser"
25 published a photograph showing British prisoners of war

cleaning the streets of Rangoon before the amused eyes
 1 of Burmese onlookers. It was a cutting of this photo-
 2 graph which was sent with the protest.^a A reminder
 3 that no reply had been received was sent by the Swiss
 4 Minister on 2 August 1942.^b There never was an answer;
 5 there couldn't be an answer.

6 J-75. As an isolated instance this would
 7 not be of great importance. Its importance lies in
 8 the attitude of the Japanese Government to subsequent
 9 complaints, particularly as to conditions in that area.
 10 The Japanese Government knew that prisoners of war
 11 there were being treated otherwise than in accordance
 12 with the POW Convention 1929. In spite of this a
 13 complaint made on 15 September 1942 as to ill treatment
 14 and starvation of prisoners of war at Rangoon Gaol
 15 Camp^a meets with a bland denial of the facts alleged.^b

17 J-76. A further protest lodged on 12 February
 18 1943 as to conditions at the same gaol - that there
 19 British and Indian officers had been beaten into
 20 unconsciousness, and that already between 20 and 30
 21 prisoners of war had died on account of general ill

22 J-74.

- 23 a. Ex. 2022 (1), T. 14754
 24 b. Ex. 2022 (2), T. 14755

25 J-75.

- a. Ex. 2022 (3), Ex. 2022 (4), T. 14754-7
 b. Ex. 2022 (5), T. 14758

1 treatment and the lack of food, water and medical
2 supplies - elicits no response.^a Still later, on
3 18 November 1944, Swiss Minister protests at ill
4 treatment of 700 British, American and Indian prisoners
5 of war at Rangoon Central Gaol.^b There is no reply.

6 J-77. Evidence has been placed before the
7 Tribunal showing that conditions, similar to those
8 complained of, existed right up to Japan's final defeat.^a

9 J-78. At the time of these protests the
10 Japanese Army was in undisturbed and unchallenged
11 occupation of the country, so it is futile to suggest
12 that the War Ministry could not have ascertained the
13 true conditions.

14 J-79. The policy behind having British
15 prisoners of war clean the streets of Rangoon is quite
16 clear; it is an attempt to lower British prestige in
17 Burma, and so improve Burmese cooperation with the
18 invading Japanese troops. The policy behind the other
19 war crimes alleged in these protests is not so clear,
20 unless it is to break the spirits of the men by starv-
21 ation and ill treatment so that they would cause no

22 J-76.

- 23 a. Ex. 2022 (6), T. 14760
24 b. Ex. 2022 (14), T. 14773

25 J-77.

- a. Ex. 1555, T. 12991; Ex. 1583, T. 13101;
Ex. 3087, T. 27567-9

trouble to their captors. Otherwise one is forced to
1 accept the view that the Japanese Government was quite
2 indifferent to the fate of its prisoners.

3 b. Thailand.

4 J-80. On 5 July 1943 the first protest as to
5 the treatment of British Commonwealth prisoners of war
6 is lodged with the accused, SHIGEMITSU. Complaint is
7 made that prisoners are suffering from starvation,
8 lack of medical supplies, boots and clothing, but that
9 in spite of this, they have been compelled to carry out
10 heavy railway constructional work and that the callous
11 treatment inflicted upon them has caused many to become
12 seriously ill.^a

13 J-81. With unaccustomed promptitude SHIGEMITSU
14 replies on 24 July that prisoners are equitably treated
15 and that all sick have received proper medical atten-
16 tion.^a

17 J-82. On 30 August the persistent Swiss
18 Minister forwards a further protest to SHIGEMITSU -
19 prisoners working for long hours without a spell at
20 backbreaking work, with insufficient food and prac-
21 tically no clothing, are dying like flies; already

22 J-80.

23 a. Ex. 2023 (1), T. 14791

24 J-81.

25 a. Ex. 2023 (2), T. 14792; Ex. 2017, T. 14747.

3,000 have died from cholera, beri beri and other diseases. Permission is sought for the Swiss Consul at Bangkok to visit the camps.^a

J-83. This protest brings from SHIGEMITSU the laconic reply on 1 October 1943 that the Imperial Government accords to prisoners of war the same treatment as that accorded to Japanese soldiers stationed in Thailand.^a

J-84. Prisoners of war were sent to Thailand for the purpose of helping to construct the Burma-Thailand Railways. The conditions under which prisoners worked and died on this railway have already been described on pages J-11 to J-14.

THE PRESIDENT: This is a convenient break. We will recess for fifteen minutes.

(Whereupon, at 1445, a recess was taken until 1500, after which the proceedings continued as follows:)

- - -

J-82. a. Ex. 2023 (3), T. 14792

J-83. a. Ex. 2023 (5), T. 14793

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Captain Kraft.

4 LANGUAGE ARBITER (Captain Kraft): If the
5 Tribunal please, the following language corrections
6 are submitted:

7 Record page 36,138, lines 18 to 21, delete
8 beginning with "from the standpoint. . ." and ending
9 with ". . . promulgation of the constitution" and
10 substituted "According to the interpretation of the
11 constitution----that is, from the constitutional usage
12 as well as the practice prevailing before the consti-
13 tution was established."

14 Exhibit No. 3128 (was not read into court
15 record) page 64, 4th line from the bottom; page 65,
16 4th line from bottom; page 67, 7th line and page 69,
17 2nd line delete the word "lynched" and substitute
18 "inflicted unauthorized summary punishment to"; page
19 65, 9th line from bottom delete "lynching" and sub-
20 stitute "inflicting unauthorized summary punishment
21 to"

22 Exhibit No. 80, lines 8 and 9 and record
23 page 17,513, lines 11 and 12 delete "highest momentous
24 affairs" and substitute "important affairs of the High
25 Command."

THE PRESIDENT: Thank you, Captain.

Colonel Mornane.

COLONEL MORNANE: If the Tribunal please,
the last reference I read as "pages J-11 to J-14"
should read "paragraphs J-27 to J-36."

J-85. Our present purpose is to examine
the state of knowledge of the Japanese authorities at
the time of these protests. It has already been shown
that YASUDA had advised Southern Army Headquarters in
1942, before the work was started, that there was a
grave danger of the prisoners contracting diseases,
and from the end of 1942 of the growing death rate.^{a.}
On Japanese figures, which Wilde declares are under-
stated by 50 per cent,^{b.} the reported death rate
jumped from 54 in November 1942 to 800 in August 1943,
the total deaths being 2909. This was in Thailand
alone.^{c.}

J-86. WAKAMATSU, who was attached to the
Transportation and Communication Section of the General
Staff at Tokyo, inspected Burma and Thailand toward
the end of July or the beginning of August 1943. This
inspection was made as a result of reports that had
been received in Tokyo that the work on the railway

(J-85. a. T. 27746.

b. T. 5434-41.

c. Ex. 473, T. 5492.)

was not progressing, that the physical condition of
 1 prisoners of war working on the railway was poor, and
 2 that the death rate was high. WAKAMATSU goes on to
 3 say that during his inspection he observed the laborers
 4 at work on the railroad and saw many cases of beri beri
 5 and dysentery amongst them and that he found that the
 6 quality and quantity of the food was not of the re-
 7 quired standard. He orally reported the results of
 8 his inspection to the Chief of the General Staff,
 9 SUGIYAMA, at Tokyo.^{e.} This was done before he
 10 relinquished his appointment with the Transportation
 11 and Communication Section in October 1943.^{b.}

12 J-87. Further information at the disposal
 13 of the Prisoners of War Information Bureau was the
 14 telegraphed monthly report from the POW Commandant in
 15 Thailand dated 3 September 1943. It showed that of a
 16 total of 40,314 prisoners in Thailand, 15,064 were
 17 sick,^{e.} that is sick by Japanese standards because you
 18 must remember that those suffering from beri beri and
 19 dysentery were still laboring on the railway line. It
 20 is therefore obvious that when SHIGEMITSU sent his
 21 replies of 24 July^{b.} and of 1 October 1943,^{c.} it was
 22 known to the military authorities in Tokyo, whose duty
 23

24 (J-86. a. T. 14634-5 (J-87. a. Ex. 1988, T. 14609
 25 b. T. 14633-6) b. Ex. 2023(2), T. 14792;
 Ex. 2017, T. 14747.
 c. Ex. 2023(5), T. 14793)

1 it was to supply him with information, that the replies
2 were not in accordance with the existing facts.

3 J-88. On 28 February 1944 the Swiss Minister
4 writes to the Japanese Foreign Office stating that the
5 condition of prisoners of war in Burma and Thailand
6 leaves much to be desired and that there are in par-
7 ticular many cases of beri beri and that medical
8 supplies to treat this disease are non-existent.^{a.}

9 No answer was received so reminders were sent on 25
10 April^{b.} and on 10 June 1944.^{c.} No reply was ever
11 received.

12 J-89. On 23 June 1944 the International Red
13 Cross Chairman proposed to the Foreign Minister that,
14 owing to the sickness of the prisoners in Burma-Thailand,
15 they should be repatriated in accordance with Articles
16 69 and 72 of the Geneva Prisoner of War Convention
17 1929 and that in the meantime the Red Cross would
18 collect medical supplies for them provided that the
19 Japanese Government would arrange for transportation
20 and distribution.^{a.}

21 J-90. On 11 July 1944 copies of this commun-
22 ication were sent by SUZUKI of the Foreign Office to
23 the War Minister, the Navy Minister and the Prisoner
24

25 (J-88. a. Ex. 2022(7), T. 14762
b. Ex. 2022(8), T. 14763.
c. Ex. 2022(9), T. 14764)
(J-89. e. Ex. 473, T. 5492)

1 of War Information Bureau. There is a rather quaint
2 covering note from SUZUKI in which he says, "... Con-
3 cerning the return of seriously wounded and ill prisoners
4 of war proposed by the International Red Cross Committee,
5 there will be much difficulty in its execution and
6 therefore an answer will be made that it would be
7 difficult to make such arrangements at present. . ."
8 He seeks the views of the addressees on his proposal
9 to send such a reply.^{a.}

10 J-91. As a result the Prisoner of War Infor-
11 mation Bureau sought from Southern Army Headquarters
12 and its own organizations in Burma and Thailand, evi-
13 dence to confute protests made as to condition of
14 prisoners but received from Southern Army and the Siam
15 Prisoner of War Camp confirmation of the poor condition
16 of the prisoners and the terrific mortality.^{a.}

17 J-92. In spite of this nothing was done to
18 give effect to the Red Cross proposal of the repatri-
19 ation of the seriously ill. The construction of the
20 Burma-Thailand railway was a matter of government
21 policy; the use of prisoner of war labor, in an area
22 dangerous to health, for constructing a strategic
23 railway line to be used for operational purposes was
24 undoubtedly a war crime; the retention and continued
25

(J-90. s. Ex. 473, T. 5492)

(J-91. a. Ex. 473, T. 5492)

1 use of prisoner of war labor in the area for that
 2 purpose after all of the facts were known to the
 3 Japanese Government shows that that Government was
 4 willing to, and did, permit the commission of war crimes
 5 in pursuance of its policy.

6 c. Wake Island.

7 J-93. From sometime prior to 20 April 1942
 8 until 27 July 1945, the Swiss Minister bombarded the
 9 Japanese Foreign Office with requests for information
 10 as to the fate of American nationals captured on Wake
 11 Island. In all he wrote 14 letters, receiving three
 12 in reply, but none of these contained any worthwhile
 13 information. From other sources the fate of all
 14 except 173 of the captured Americans was ascertained. a.

15 J-94. Evidence has been given showing that
 16 96 of these prisoners were executed on 7 October 1943
 17 on the orders of Admiral SAKIBARA, who commanded the
 18 island, and that the sole survivor was executed a week
 19 later by the Admiral personally. e. Prisoners had

20 been held at Wake Island for laboring purposes, b. and
 21 the fact that they were there was known to the Japanese
 22 Government, c. yet it refused to supply information to

23 (J-93. a. Ex. 2034, T. 14932; Ex. 2039-53, T. 14932-
 24 15016)

25 (J-94. a. T. 14926-31; Ex. 2036A, B, C, T. 14973

b. T. 14911-37; Ex. 2035, T. 14968

c. T. 27379.)

that effect to the Protecting Power. They were eventually killed because the Japanese feared that the Americans^{d.} would land on the island.

J-95. It will be shown hereafter that the killing, or threatening to kill prisoners, in the event of an allied landing, was a practice adopted by the Japanese in all areas of occupation. The only possible grounds that one can suggest for the failure of Japan to notify the Protecting Power, when requested, of the whereabouts of these prisoners, are that the Government realized that the prisoners might be killed in pursuance of such a policy.

d. Japan.

J-96. On 16 June 1943 the Swiss Minister conveyed to the Japanese Foreign Minister a request that additional food in the form of soya products, which were believed to be plentiful in Japan, should be distributed to prisoners of war to augment the nutritive value of their food.^{a.}

J-97. On 23 June 1943 Japanese Foreign Minister replied that the Japanese did not see the necessity of increasing the supply of any particular foodstuff.^{a.}

(J-94. d. T. 14926; Ex. 2036A,B,C, t. 14973)
(J-96. a. Ex. 2026(1), T. 14836.)
(J-97. a. Ex. 2026(2), T. 14836.)

J-98. At this time the War Ministry knew positively that prisoners no further away than the Tokyo Group of Prisoner of War Camps were dying of malnutrition. In February 1943 the Army Medical College had started an investigation of the health of the prisoners in these camps; its report disclosed that they were in an undernourished condition due to a lack of a proper and sufficient supply of nutriment.^{a.} That this investigation was completed by May 1943 is established by a technical report published in the Monthly Report of the Prisoner of War Information Bureau.^{b.}

J-99. It is difficult here to suggest any definite government policy, and the attitude adopted would appear to arise from indifference to the fate of prisoners of war.

e. Dutch Hospital Ship "Op ten Noort."

J-100. On 1 March 1942 the Dutch Hospital Ship "Op ten Noort" while looking for survivors from two sunken Dutch cruisers near the island of Bawear was taken over by the Japanese and eventually sent to Japan where the complement of the ship was interned. The vessel was used by the Japanese for their own purposes and subsequently lost.^{a.}

(J-98. a. T. 27809-9, Ex. 3111, T. 27810.

b. Ex. 3110, T. 27809.)

(J-100. a. Ex. 2065, T. 15065.)

J-101. On 28 May 1942, Sweden as Protecting
 1 Power for Holland sent a protest to the accused TOGO.
 2 On 9 June 1942 the Japanese Foreign Office replied
 3 and said that the capture was justified because the
 4 ship was being used for military purposes.
 5

J-102. On 28 September 1942 a further protest
 6 was made by Sweden to the Japanese Foreign Office
 7 rejecting the Japanese contention that the ship was
 8 being used for military purposes when captured.
 9 In addition, protests were made by the Master of the ship
 10 to the Japanese Navy Minister on 22 February 1943
 11 and to the Japanese Prime Minister on 23 February
 12 1944.
 13

J-103. One would have expected that, before
 14 ratifying the seizure of this ship, the Japanese Govern-
 15 ment would have insisted upon the most cogent evidence
 16 of the ship's having been used for military purposes
 17 being presented by the naval authorities. One would
 18 have further expected such evidence to have been placed
 19 before the Tribunal by the defense in justification of
 20 the course adopted by the Japanese Government. No
 21 such evidence was given, and it is submitted that its
 22 absence gives rise to an almost irresistible inference
 23

24 (J-101. a. Ex. 2071, T. 15081 (J-102. a. Ex. 2073, T. 15081
 25 b. Ex. 2072, T. 15081) b. Ex. 2067, T. 15070
 c. Ex. 2068, T. 15073)

that no such evidence ever existed.

1 J-104. If this inference is drawn the seizure
2 of this hospital ship is seen as an exercise of the
3 Japanese Government policy for the purpose of improv-
4 ing its own naval equipment.

5 (f) Philippines and China.

6 J-105. On 23 December 1942 the Swiss Minister
7 sent to the Japanese Foreign Minister on behalf of the
8 Government of the United States of America a protest
9 against the manner in which civilians and prisoners
10 of war were being treated in the Philippines and China.^{e.}
11 Generally this note alleged torture, starvation, ill
12 treatment and murder and specified the places in which,
13 and the persons upon whom, such war crimes were committed.
14

15 J-106. As nothing beyond a formal reply
16 stating that investigations would be made had been
17 received by 5 February 1944, the Swiss Minister again
18 requested a reply and in addition sent a further de-
19 tailed list of complaints received from the Government
20 of the United States of America.^{a.}

21 J-107. On 24 and 28 April 1944 the Japanese
22 Foreign Minister sent letters to the Swiss Minister
23 in some cases denying, and in other admitting and
24 (J-105. a. Ex. 2024(1), T. 14795; Ex. 1477, T. 12797)
25 (J-106. a. Ex. 2024(2), T. 14796; Ex. 1479, T. 12803)

1 attempting to justify, the facts upon which protests
2 of 23 December 1942 and 5 February 1944 were based.^{a.}

3 J-108. It is not proposed to detail here all
4 the complaints made in those protests, but for the
5 purpose of illustration reference will be made to a
6 few of them.

7 (1) Bridgehouse, Shanghai - Protests alleged
8 that 53 Americans had been imprisoned for varying
9 periods up to over six months in gendarmerie prison,
10 Bridgehouse, where they were crowded into vermin-
11 infested cells with common criminals, some of whom
12 suffered from loathsome contagious diseases. Sanitary
13 facilities were primitive and inadequate; food was far
14 below standard necessary to maintain health; no heat
15 was supplied from December to June and medical care
16 was non-existent. Mr. Powell through lack of medical
17 attention developed gangrene and lost the front half of
18 both feet.^{a.}

19 The Japanese reply was that all Americans
20 referred to were violators of military regulations
21 and consequently criminals. They were not considered
22 as being on the same footing as civilians interned
23 under civil procedure, but they received medical
24 (J-107. a. Ex. 2024(3), T.14796;Ex. 2024(4),T.14827)
25 (J-108. a. Ex. 2024(I), T. 14795)

1 attention and a food ration like that given to other
 2 criminals. In addition, they could have sent in from
 3 outside any food they purchased.^{b.}

4 Evidence verifying the conditions referred
 5 to in the American protest was given by the late
 6 Mr. J. B. Powell. He, in common with other Shanghai
 7 newsmen, was confined in Bridgehouse on 20 December
 8 1941, until 1 March. During that time he was inter-
 9 rogated but was never charged with any offense.^{c.} This
 10 was corroborated by other prosecution evidence.^{d.}

11 (ii) Bataan Death March - The protest refers
 12 to the Bataan Death March; the details of this, as shown
 13 by the prosecution's evidence, are contained on J-37
 14 to J-39 of this summation. The Japanese reply admits
 15 the march, and attributes it to lack of transport, but
 16 denies the mistreatment of prisoners of war.^{e.}

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 18
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 22 (J-108. b. Ex. 2024(3), T. 14796.
 23 c. T. 3271-85
 24 d. Ex. 1894; Ex. 1895, T. 14165-8
 25 e. Ex. 2024(3), T. 14796.)

(iii) Camp O'Donnell - The protest alleges
 1 that 2200 Americans and 20,000 Filipinos were reported
 2 to have died in the first few months of their deten-
 3 tion, and that these deaths could have been avoided had
 4 the Japanese provided the minimum medical care for
 5 the prisoners.
 f.

6 J-109. The Japanese, in reply, do not comment
 7 on the figures; they say that inadequacy of medical
 8 supplies was due to the fact that the Americans had
 9 destroyed their own supplies before capture; they
 10 also maintain that proper medical attention is being
 11 provided for the prisoners.
 a.

12 J-110. The American protest is verified by
 13 prosecution evidence showing that 1500 Americans and
 14 26,000 Filipinos died at Camp O'Donnell between April
 15 1942 and December 1942, and that deaths could have
 16 been prevented by proper food, shelter, clothing,
 17 water, sanitation and medication.
 a.

18 J-111. In spite of these matters having been
 19 brought to the notice of the Japanese Government sim-
 20 ilar conditions to those described continued to exist
 21 in the Philippines and Shanghai up to the date of the
 22 Japanese defeat.
 a.

23 (J-108. f. Ex. 2024(2), T. 14796)

24 (J-109. a. Ex. 2024(4), T. 14827)

25 (J-110. a. Ex. 1450, T. 12597-9)

(J-111. a. Ex. 1458, T. 12732; Ex. 1456, T. 12725;
 Ex. 1893, T. 14165; Ex. 1898, T. 14173;
 Ex. 1900, T. 14178; Ex. 1909, T. 14190)

(g) Murder of crews of sunken merchant ships.

1 J-112. Evidence has been given that between
 2 14 December 1943 and 29 October 1944, eight British,
 3 American and Dutch merchant vessels were sunk by Jap-
 4 anese submarines in the Indian Ocean and one American
 5 in the Pacific Ocean. The submarines then took, or
 6 attempted to take, the Master of the ship aboard and
 7 then murdered or attempted to murder the crews.^{a.}

8 (i) On 5 June 1944 the Swiss Minister on
 9 behalf of the British Government sent a protest to
 10 SHIGEMITSU against the treatment of Master and crew
 11 of each of the British ships sunk.^{b.} On 16 September
 12 1944 a reminder was sent that no answer had been re-
 13 ceived.^{c.} On 28 November 1944 the Japanese Foreign
 14 Office denied the atrocities alleged to have occurred
 15 in connection with the sinking of these ships.^{d.} On
 16 19 May 1945 the Swiss Minister reiterated the protest
 17 of the British Government as regards the treatment of
 18 the crew of these ships. He also drew attention to
 19 an operation order dated 20 March 1943 issued by the
 20 Admiral commanding the First Japanese Submarine Force.
 21 He writes, "Fifth paragraph of this order authorizes
 22 (J-112. a. Ex. 2076, T. 15088; Ex. 2087-0, T. 15141-50;
 23 Ex. 2094-9, T. 15157-69
 24 b. Ex. 2092, T. 15153
 25 c. Ex. 2101, T. 15175
 d. Ex. 2102, T. 15177)

1 submarine commanders not to stop with sinking of allied
2 ships and cargoes, but at the same time to carry out
3 complete destruction of allied crews except for such
4 members as it may be desirable to apprehend with a
5 view to securing intelligence."^{e.}

6 (ii) On 19 June 1944 the Swiss Minister on
7 behalf of the Government of the United States of America
8 protested to SHIGEMITSU that when the "Richard Hovey"
9 was sunk on 29 March 1944 the Japanese submarine had
10 rammed and fired on the ship's boats, had fired on
11 the survivors of the crew, and had taken on to the
12 submarine four members of the crew of whom nothing
13 had since been heard.^{f.} On 28 November 1944, SHIGE-
14 MITSU denied the happening of the atrocities alleged
15 in regard to the sinking of the "Richard Hovey."^{g.}

16 (iii) On 29 December 1944 an American protest
17 against atrocities committed by the submarine which
18 sank the "Jean Nicolet" was handed by an attache of
19 the Swiss Legation to Minister Tadakazu SUZUKI. It
20 states: "The vessel sank at approximately 0220 hours
21 July 3rd. Seventy-five survivors of the "Jean Nicolet"
22 were murdered when after leaving the sinking vessel
23 between 95 and 100 persons from the torpedoed vessel
24

25 (J-112. e. Ex. 2103, T. 15178
f. Ex. 2076, T. 15088
g. Ex. 2078, T. 15092)

1 were subjected by the commander and the crew of the
2 Japanese submarine to treatment which was in contra-
3 vention of the laws and customs of war and all humani-
4 tarian standards The United States Government
5 protests that -

6 (1) The lifeboats and life rafts were machine
7 gunned evidently to render them unusable by any of the
8 survivors of the 'Jean Nicolet'; survivors of the 'Jean
9 Nicolet' who were swimming were also machine gunned.

10 (2) The survivors upon boarding the submarine
11 were robbed of all life belts, papers and other valuables.

12 (3) The survivors of the 'Jean Nicolet' after
13 boarding the submarine were bound either with rope or
14 wire and compelled to sit or kneel with heads down in
15 rows athwartship from bow to stern facing the forward
16 deck.

17 (4) Approximately half the survivors of the
18 'Jean Nicolet' were led separately to the after deck
19 of the submarine and compelled to run between parallel
20 rows of Japanese sailors armed with a variety of instru-
21 ments, including gun butts and bayonets. While run-
22 ning this gauntlet the men were subjected to severe
23 beating, and still bound were forced off the submarine
24 into the water while the vessel was underway, with the
25 evident likelihood that they would be caught in the

turning propeller.

(5) The submarine suddenly and with no warning to the survivors of the 'Jean Nicolet' submerged, leaving a large number of them still on the deck of the vessel without means of self-preservation. D. M. Nilsson and Clem Carlin, Master and Chief Mate respectively of the 'Jean Nicolet' were made prisoners and taken within the submarine, such treatment being similar to that accorded the master and three other survivors of the United States vessel 'Richard Hovey' The United States Government demands to be urgently informed regarding the present welfare and whereabouts of Captain Nilsson and Chief Mate Carlin . . . The Government of the United States demands a full and thorough investigation from the Japanese Government, and that the persons responsible for the incredibly cruel and terrible conduct against the defenseless survivors of the torpedoed vessel promptly be fully punished and that it be informed of the action taken. . . .^{h.}

J-113. The Japanese reply dated 15 May 1945^{a.} denied the allegations contained in the protest.

J-114. The history of the Japanese decision to destroy the crews of torpedoed ships can be gathered (J-112. h. Ex. 2080, T. 15095)
(J-113. a. Ex. 2086, T. 15105)

1 from documents that have been put in evidence. On 3
2 January 1942 a conversation took place between Hitler
3 and OSHIMA. In the course of it Hitler "pointed out
4 that no matter how many ships the U.S.A. built, one of
5 their chief problems was the personnel shortage. For
6 this reason the merchant vessels were also being sunk
7 without warning, with the idea that as large a part
8 as possible of the crew should perish in consequence.
9 If word should once get about that most seamen were lost
10 in torpedoings, the Americans would soon have diffi-
11 culties in recruiting new people . . . We were fight-
12 ing for our existence and therefore could not permit
13 any humanitarian points of view to govern. For this
14 reason he had to give the order that in case foreign
15 seamen could not be taken prisoner, which was not for
16 the most part possible on the open sea, the submarines
17 were to surface after torpedoing and shoot up the life-
18 boats. Ambassador OSHIMA sincerely concurs in these
19 statements of the Fuehrer and says that the Japanese
20 too are forced to follow these methods. . . ."^{a.}

21 J-115. On 20 March 1943 the Operation Order
22 of the First Submarine Force is issued instructing
23 submarine commanders to destroy the crews of sunken
24 ships, after taking such members into custody as may
25 (J-114. a. Ex. 3813, T. 37910)

be useful for the purpose of intelligence.^{a.} From
 1 14 December onward this Order is obeyed.

2 J-116. It is submitted that it is very ob-
 3 vious here that the destruction of ships' crews was a
 4 matter of government policy. Had it been otherwise
 5 the protests lodged on 5 June 1944 as to the sinkings
 6 of British ships and on 19 June 1944 as to the sinking
 7 of the United States ship "Richard Hovey" would have
 8 resulted in orders being issued which would have saved
 9 the crew of the "Jean Nicolet" on 3 July^{a.} and the crew
 10 of the American Merchantman "John A. Johnson" on 29
 11 October 1944.^{b.}

12
 13 Transcripts of recordings of broadcasts from Great
 14 Britain and America as conveying knowledge of the com-
 15 mission of war crimes to the Japanese Government.

16 J-117. On 24 January 1944 at 1700 hours BBC
 17 London broadcast official United States Army and Navy
 18 reports of Japanese atrocities committed on American and
 19 Filipino prisoners. This broadcast included a state-
 20 ment that in one camp 2300 American prisoners had died
 21 between April and May 1942, while in another 4000 had
 22 died by October 1942.^{a.} On 29 January 1944 there were
 23 three American broadcasts through KWID.

24 (J-115. a. Ex. 2105, T. 15184)

25 (J-116. a. Ex. 2087, 2088, T. 15140-5
 b. Ex. 2089, 2090, T. 15148-50)

(J-117. a. Ex. 1488, T. 12821)

(i) at 7 a.m. through San Francisco KWID
1 quoted Secretary of State, Cordell Hull, as saying
2 ". . . thousands of American and Filipino soldiers
3 captured in the Philippines were wantonly murdered by
4 the Japanese; 5200 American soldiers died mostly of
5 starvation at two prison camps in October 1942. Anthony
6 Eden had told the British House of Commons that thou-
7 sands of British, Chinese, Burmese and Indian prisoners
8 of war and internees had died in Japanese prison camps
9 and that British protests had drawn unsatisfactory re-
10 sults."
11

12 (ii) At 8 a.m. the foregoing was repeated
13 together with an additional statement by Cordell Hull
14 that repeated protests had been lodged with Tokyo, but
15 to no apparent avail.

16 (iii) At 6 p.m. White House Secretary Stephen
17 Early said that the Japanese Government would not per-
18 mit the United States Government to send food, material
19 aid, or supplies to American and Filipino soldiers
20 who were in Japanese hands.
b.

21 J-118. On 23 October 1944 an Army News Ser-
22 vice Broadcast stated "General MacArthur addressed a
23 warning to Field Marshal Count TERAUCHI that he will
24 hold enemy leaders immediately responsible for failure
25 (J-117. b. Ex. 1488, T. 12821)

1 to accord prisoners of war and internees proper
2 treatment; unimpeachable evidence has been received
3 of degradation and brutality to which prisoners have
4 been subjected."^a.

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22 (J-118. a. Ex. 1488, T. 12821)
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1 J-119. The certificate verifying the exhibit
2 containing the foregoing stated that transcripts of
3 recordings of broadcasts were regularly distributed
4 to all sections of the Foreign Office and also to the
5 Board of Information, Navy Ministry and War Ministry.^{a.}

6 J-120. The significance of this evidence
7 lies in the fact that it shows that a wider circle
8 of officials of the Japanese Government was infected
9 with knowledge of the war crimes specified than
10 that which would have obtained information from the
11 diplomatic protests.

12 J-121. The attention of the Tribunal is
13 invited to the fact that the statement of White
14 House Secretary Stephen Early is corroborated by the
15 evidence of defense witness KUDO, Tadao of the
16 Japanese Foreign Office, who said that the American
17 Red Cross proposed to send ships with goods for the
18 relief of their prisoners in various places in East
19 Asia, but that the Japanese Navy rejected the proposal.^{a.}

21 Official Japanese documents authorizing or
22 evidencing the commission of war crimes.

23 J-122. Article 6 of the Hague Convention
24 1907 provides (inter alia) that tasks upon which

25 J-119. a. Ex. 1488, T. 12821.
J-121. a. T. 27153.

1 prisoners of war are employed shall have no connec-
2 tion with the operations of the war. Article 31 of
3 the Geneva Prisoner of War Convention 1929 states
4 that labor furnished by prisoners of war shall have
5 no direct relation with war operations. . A series of
6 official Japanese documents which have been put in
7 evidence show that the Japanese Government deliberately,
8 and as a matter of policy, compelled its prisoners of
9 war to engage in such labor.

10 (i) In a communication dated 8 May 1942 to
11 the Chief of Staff of the Taiwan Army, the accused
12 KIMURA states, "So that they can be used for the
13 enlargement of our production and as military labor,
14 white prisoners of war will be confined successively
15 in Korea, Formosa, and Manchuria. . ."^{a.}

16 (ii) In the "Monthly Reports of the Secret
17 Service Police" for August 1942 is set out a plan to
18 use prisoners of war as a result of the labor shortage.
19 I quote from this plan, "Owing to the good results
20 obtained by 150 American prisoners of war at Zentsuji
21 POW Camp who had been sent to Osaka in order to engage
22 in laboring works as a neutralizing measure for labor
23 shortage suffered in the military works and harbor
24 equipment, the enterprising circles who were suffering
25 J-122. a. Ex. 2010, T. 14716.

1 from the labor shortage at several districts around
2 Tokyo. . . applied to the military authorities to
3 allow them to use prisoners of war. . ."^{b.}

4 (iii) On 22 August 1942 the accused KIMURA,
5 as Vice-Minister of War writes to the Chief of Staff
6 of the Kwantung Army, "For the realization of the
7 urgent organization of the aircraft production we
8 want to improve the present capacity of the Manchurian
9 Machine Tool Co. according to the plan of utilization
10 enclosed herewith, and to allot a large part of its
11 improved capacity to the production of machine tools
12 which are necessary for the urgent organization of the
13 production of air ordnances, ammunition and aircraft
14 in our country, especially to the production of special
15 machine tools for mass production, which are necessary
16 for the expansion of the factory in the Nisean Motor
17 Car Co. Manufacturing Section, a main factory of
18 ammunition for aviation automatic gun. . ." The plan
19 which is referred to envisages the employment of 1500
20 prisoners of war.^{c.}

21
22 (iv) Foreign Affairs Monthly Report
23 September 1942 published by the Foreign Section of the
24 Police Bureau of the Home Ministry states, "The labor
25 shortage problem in Japan has become quite acute
J-122. b. Ex.1972A, T. 14509; c. Ex. 1970A, T. 14479.

becoming more and more serious recently . . . As a
 1 result the Cabinet Planning Board entrusted by the
 2 Army Administration Department for War Prisoners held
 3 a conference on August 15 regarding the transfer of
 4 war prisoners to Japan proper and their employment.
 5 At this conference the following principles were dis-
 6 cussed and decided to be carried out. . . I. Of the
 7 industries in the National Mobilization Plan, war
 8 prisoners shall be employed for mining, stevedoring
 9 and engineering and construction work for national
 10 defense. . .^{d.}
 11

12 (v) On 2 October 1942 the Chief of Staff of
 13 the Eastern District Army wrote to the accused TOJO
 14 as follows: ". . . we request your sanction of the
 15 employment of the war prisoners interned in the Tokyo
 16 POW Camp for the undermentioned works. . ." There
 17 follows a description of the kinds of labor and this
 18 includes "Industrial labor for the expansion of pro-
 19 ductive power" and among the places of labor is men-
 20 tioned "Munition factories for expanding production."^{e.}
 21 Under the same date is a draft of the War Minister's
 22 instruction approving of the abovementioned applica-
 23 tion.^{f.}
 24

25 J-122. d. Ex. 1971A, T. 14505. f. Ex. 1967, T. 14484.
 e. Ex. 1967, T. 14484.

(vi) A report of the Governor of Kanagawa Prefecture to Ministers of Welfare and Home Affairs dated 6 October 1942 states in reference to prisoners of war labor at Kawasaki and Yokohama Camps, ". . . It is generally admitted by all the business proprietors alike that the use of P. W. labor has made the systematic operations of transportation possible for the first time, and has not only produced a great influence in the business circles but will also contribute greatly to the expansion of production, including munitions of war. . ." ^{g.}

(vii) A report dated 4 September 1942 from the accused ITAGAKI, as Korean Army Commander, to the accused TOJO sets out regulations in use in the Korean POW Camps. They include the following: "Article 2. Not one POW must be left to time in idleness. Allow appropriate labor according to their skill, age, and physical strength, thereby using them in industrial development and military labor." Article IV, par. 2, includes in the type of labor for which prisoners shall ^{h.} be used engineering labor on airfields.

J-122A. Article 6 of the Hague Convention 1907 and Article 27 of the Geneva POW Convention 1929
J-122. ^{g.} Ex. 1969, T. 14491.
^{h.} Ex. 1976, T. 14529.

forbids the compulsory employment of officer prisoners.

1 (1) On 3 June 1942 the Director of POW
2 Custody Division sent a circular to army units on the
3 subject of "Labor imposed on POW officers and non-
4 commissioned officers." It states, "Although the
5 imposition of labor upon POW officers and noncommis-
6 sioned officers is prohibited under Article I of the
7 POW Labor Regulations, it is the policy of the General
8 Authorities, in view of the present condition of this
9 country which does not allow anyone to lie idle and
10 eat freely, and also with a view to maintaining the
11 health of prisoners of war to have them volunteer to
12 work in accordance with their respective status,
13 intelligence, strength, etc. Therefore, it is desired
14 that proper direction be given accordingly. . ."^{a.}

15
16 A similar notification was sent to the Chief of Staff
17 of the Taiwan Army on 5 June 1942.^{b.}

18 (ii) On 4 September 1942 the accused
19 ITAGAKI, who was then Commander of the Korean Army
20 sent to the accused TOJO a report on the regulations
21 in force in the Korean POW Camps. Article 3 of these
22 regulations reads as follows: "All prisoners of war
23 including officers shall work. But guide those above
24 warrant officers according to status, ability and
25 J-122A. a. Ex. 1961, T. 14425; b. Ex. 2003, T. 14708.

1 physical strength to work voluntarily. . . ." ^{c.} The
2 language used "guide . . . officers . . . to work
3 voluntarily" would suggest an absence of compulsion
4 but it is submitted that this is merely a Japanese
5 euphemism for "make it so uncomfortable for them if
6 they don't work that they will volunteer for work."
7 This is borne out by evidence which has been placed
8 before the Tribunal; a reference to this evidence will
9 be given later in the summation.

10 J-123. Article 2 of the Geneva POW Convention
11 1929 provides that prisoners of war must at all times
12 be protected particularly against insults and public
13 curiosity.

14 (i) The Governor of Kanagawa in his report
15 to the Ministers of Welfare and Home Affairs of
16 6 October 1942 which was sent on to the Commander of
17 the Eastern Area Army and the War Ministry states,
18 ". . . Though the public has not been informed of POW
19 labor, those who have guessed about it from seeing
20 them on their way to and from the place of labor and
21 their camps, seem to realize with gratitude the glory
22 of the Imperial Throne, seeing before their eyes
23 English and American POW at their labor. A considerable
24 J-122A. c. Ex. 1976, T. 14259.
25

influence seems to have been exercised over the people of this prefecture, many of whom had been considerably pro-Anglo-American."^{a.}

(ii) On 4 March 1942 the Chief of Staff of the Korean Army sends to the accused KIMURA, who was then Vice-Minister of War, a signal in which he says, "As it would be very effective in stamping out the respect and admiration of the Korean people for Britain and America, and also in establishing in them a strong faith in victory, and as the Government-General and the Army are both strongly desirous of it, we wish you would intern 1000 British and 1000 American POW in Korea. . ." The signal goes on to say that certain buildings will be used for interning the prisoners.^{b.}

On 5 March KIMURA sends a reply stating that 1000 prisoners of war are being sent and suggesting that the buildings in which it is proposed to house prisoners of war are too good for that purpose.^{c.}

On 23 March 1942 the accused ITAGAKI, as Commander-in-Chief of the Korean Army sends to the accused TOJO a plan for the internment of prisoners of war. In this plan he sets out the purpose as follows:

J-123. a. Ex. 1969, T. 14491.
b. Ex. 1973, T. 14512.
c. Ex. 1973, T. 14512.

1 "It is our purpose by interning American and British
2 prisoners of war in Korea, to make the Koreans realize
3 positively the true might of our Empire as well as to
4 contribute to psychological propaganda work for stamp-
5 ing out any ideas of worship of Europe and America
6 which the greater part of Korea still retains at
7 bottom.^{d.}

8 On 13 October 1942 the Chief of Staff of the
9 Korean Army sends to the accused KIMURA a report of
10 the parade of 998 POW along bystander-thronged roads
11 of Fusan, Seoul and Jinsen in Korea. He says, "As a
12 whole it seems that the idea was very successful in
13 driving all admiration for the British and Americans
14 out of their (i. e. the Koreans') minds and in driving
15 into them an understanding of the situation. . ."^{e.}

16 J-124. Article II of the Hague Convention
17 1907 states that a prisoner of war cannot be compelled
18 to accept his liberty on parole. It necessarily
19 follows from this that he cannot be compelled to sign
20 an agreement or take an oath not to escape when he
21 does not even get his liberty in exchange.
22

23 (i) I shall now refer to certain regulations
24 and laws made by the Japanese during the Pacific War

25 J-123. d. Ex. 1973, T. 14512.
e. Ex. 1975, T. 14520.

1 under which they authorized the compulsory adminis-
2 tration to prisoners of oaths that they would not
3 escape, and providing heavy penalties for breaches
4 of such oaths.

5 Article 5 of the Detailed Regulations for
6 Treatment of Prisoners of War reads as follows,

7 "As soon as prisoners of war have been imprisoned,
8 they shall be administered an oath forbidding them
9 from making an escape. Prisoners of war who refuse
10 to take the oath mentioned in the previous paragraph
11 shall be deemed to have intentions of escaping and
12 shall be placed under strict surveillance.^{a.} The
13 attention of the Tribunal will, at a later stage of
14 this summation, be invited to the evidence showing
15 the means adopted by the Japanese to compel prisoners
16 to take the oath or to sign the nonescape agreement.
17

18 Article 10 of the Discipline Law for Prisoners
19 of War reads: "Those persons who have taken an oath
20 not to escape and who violate this oath shall be
21 subject to either hard labor or imprisonment for
22 a minimum of one year. Those persons who violate any
23 other oaths shall be subject to a maximum of ten
24 years."^{b.}

25 J-124. a. Ex. 1965, T. 14439.
b. Ex. 1965, T. 14439.

1 (ii) On 1 September 1942 the Commander of
2 the Taiwan Army reported to the accused TOJO the
3 arrival of prisoners of war at Taison. In the course
4 of his report he writes, "At first Lieutenant-General
5 Percival and others refused to make an oath, but
6 finally all but three signed their names. After that
7 they became obedient." c.

8 (iii) On 13 October 1942 the Chief of
9 Staff of the Korean Army reports that immediately
10 after the arrival of prisoners in Korea the Japanese
11 succeeded in making them all take the oath. d.

12 J-125. Article 4 of the Hague Convention
13 1907 and Article 2 of the Geneva POW Convention 1929
14 require that prisoners of war will at all times be
15 humanely treated.

16 (i) Consorship instructions dated 20 December
17 1943 from the Chief of the Information Bureau of the
18 War Ministry shows that officials at the War Ministry
19 were aware of the cruel treatment meted out to
20 prisoners of war. The instruction prohibits
21 ". . . any reports which give an impression of cruel
22 treatment, such as prisoners being punished or being
23 made to labor without clothing . . ." The reason for
24 J-124. c. Ex. 1968, T. 14488.
25 c. Ex. 1975, T. 14520.

1 this is that such reports "might give the enemy food
2 for evil propaganda and bring harm to our interned
3 brothers!"^{a.}

4 (ii) The Defense put in evidence a report
5 of the treatment of prisoners of war in Japan. Part
6 of this report details the punishments inflicted on
7 Japanese who mistreated prisoners of war. These
8 are shown at page 14 to 33, and 54 to 70, of the
9 exhibit, and although they form part of the evidence
10 before the Tribunal they were not read into the
11 transcript. They show that there were 156 cases
12 of Japanese being punished for mistreatment of prisoners
13 of war between February 1943 and August 1945. It is
14 noticeable that the punishment given is trivial and
15 bears no relation to the hurt inflicted on the
16 prisoners of war. Thus the common punishment for
17 beating prisoners is "admonition" or "reproof": for
18 detaining prisoners in the guardhouse in the depth
19 of winter without clothes or bedding Captain MURAKAMI
20 was admonished; for beating and bayoneting a prisoner
21 another Japanese received "5 days heavy good behavior,"
22 whilst another who frequently lynched prisoners was
23 admonished.
24

25 J-125. a. Ex. 1977, T. 14539.

1 At this stage, if the Tribunal pleases, the
2 language correction which was made immediately after
3 the last recess referred to the use of that term
4 "lynching." That is an incorrect term and should be
5 replaced by "inflicted unauthorized summary punish-
6 ment."

7 The point of all of this, here, is that the
8 Japanese authorities knew of the mistreatment of
9 prisoners. The contemptuous punishments imposed
10 show that the government took no real steps to pro-
11 tect the prisoners of war from the brutality of the
12 guards.
13 b.

14 J-126. Under Article 8 of the Hague Con-
15 vention and Article 50 of the Geneva POW Convention
16 1929 escaped prisoners are liable to disciplinary
17 punishment only. In the 1929 Convention it is defined
18 in Article 54, "Arrest is the most severe disciplinary
19 punishment that may be imposed on a prisoner of war.
20 The duration of a single punishment may not exceed
21 30 days."

22 Although it is not defined in the Hague
23 Convention it is submitted that it has a perfectly
24 well-known meaning at military law and that it is in
25 terms of military law that the expression was used in
J-125. b. Ex. 3128, T. 27894.

1 the Hague Convention 1907. It means the amount of
2 punishment that can be inflicted by a commanding or
3 other officer in distinction to what may be awarded
4 by a court martial. No evidence has been adduced to
5 prove this but it is submitted that it is within the
6 powers of the Tribunal to ascertain the state of the
7 law for itself.

8 (i) That the French text is the only
9 official text of the Hague Convention 1907, and that
10 in the event of any conflict that text will prevail,
11 and that, as a consequence, if the meaning of a term
12 is in doubt the French meaning of that term will be
13 adopted;

14 (ii) That under French law "disciplinary
15 punishment" has the meaning set out above, that is
16 the amount of punishment that can be inflicted by an
17 officer in distinction to that which can be inflicted
18 by a court martial. The quantum of such punishment is
19 60 days arrest;

20 (iii) That under Japanese law disciplinary
21 punishment consists of arrest for a period not exceed-
22 ing 30 days;

23 (iv) That a distinction is drawn by the
24 Japanese between disciplinary and other punishments
25 is shown by the reference to disciplinary punishment

1 in Article 7 of Regulations for Treatment of Prisoners
2 of War which provides that "a prisoner of war, not
3 on parole who is captured before he succeeds in escap-
4 ing shall be subject to disciplinary punishment."^{a.}

5 This distinction is also indicated by monthly returns
6 sent to the War Ministry setting out separately
7 court martial punishments and disciplinary punish-
8 ments.^{b.}

9 (v) That the reason for the inclusion of
10 the definition of disciplinary punishment in the
11 Geneva POW Convention 1929 was the difference in
12 quantum of punishment in the different countries.

13 (J-126. a. Ex. 1965, T. 14,439.
14 b. Ex. 1999, T. 14,698.)
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1 In paragraph J-124 of this part of the sum-
2 mation the prosecution submitted that the compulsory
3 signing of nonescape agreements or the compulsory
4 taking of oaths not to escape were illegal under the
5 Hague Convention 1907.

6 According to Japanese official figures, between
7 2 June 1942 and 3 March 1945, 64 prisoners were con-
8 victed by court-martial for violation of nonescape
9 oath and received sentence ranging from one year's im-
10 prisonment to death.^{c.}

11 Of course the only offense with which they
12 could have been charged in the light of the restrictions
13 imposed by international law was that of escaping and
14 the penalty would have been limited to thirty days'
15 arrest.

16 The imposition of these illegal penalties was
17 known to the Japanese Government because monthly returns
18 were required of all court-martial punishments and of
19 all disciplinary punishments imposed.^{d.} These returns
20 were sent to the Prisoners of War Information Bureau.
21 OYAMA, who held a position akin to that of a Judge
22 Advocate General, said that reports of all courts-
23 martial were made to him at the War Ministry.^{e.}

25 (J-126. c. Ex. 1998, T. 14,682.
d. Ex. 1999, T. 14,698.
e. T. 21,669.)

1 J-127. Article 29 of the Hague Convention
2 states, "A person can only be considered a spy when,
3 acting clandestinely or on false pretenses, he obtains
4 or endeavours to obtain information in the zone of
5 operations of a belligerent, with the intention of com-
6 municating it to the hostile party."

7 Between 1 December 1943 and 25 November 1944
8 five prisoners of war were convicted of espionage and
9 sentenced to death and one was convicted of attempted
10 espionage and sentenced to fourteen years imprisonment. a.
11 This is shown on official Japanese returns.

12 It is submitted that a prisoner of war cannot
13 possibly be a spy, unless, perhaps, if he is set at
14 liberty on parole. The basis of this is that by virtue
15 of his status as prisoner of war his hostile character
16 is known to the detaining power. The prosecution has
17 given evidence of the activities, torture and trial
18 of the late Captain Matthews, whose name appears on
19 this list. b.
20

21 The prosecution contends that these convictions
22 were on the face of them illegal and that the Japanese
23 Government through its representatives at the War
24 Ministry knew of them.

25 (J-127. a. Ex. 1998, T. 14,682.
b. Ex. 1666-7, T. 13,404-19.)

1 J-128. Finally official orders issued to
2 destroy documents, and authorizing the escape of guilty
3 persons show that the Japanese Government was well
4 aware of the fact that war crimes had been committed
5 on a gigantic scale.

6 A certificate dated 5 August 1946 shows that
7 the Adjutant General under the order of the War Minister
8 on 14 August 1945 issued a notification to all army
9 troops to the effect that "the confidential documents
10 held by every troop should be destroyed by fire
11 immediately"^{a.} and instructions issued by the Chief of
12 the Military Police on 14 August 1945 ordering the
13 destruction of documents corroborates such certificate.^{b.}

14 A still more illuminating document is a
15 circular that was sent by the Chief of the Prisoner of
16 War Information Bureau to the Korean Army, Taiwan Army,
17 Kwantung Army, North China Area Army, to Hong Kong,
18 Borneo, Thailand, Malaya and Java on 20 August 1945.
19 It states, "Personnel who mistreated prisoners of war
20 and internees or who are held in extremely bad senti-
21 ment by them are permitted to take care of it by
22 immediately transferring or fleeing without trace.
23 Moreover documents which would be unfavourable for us

24 (J-128: a. Ex. 2000, T. 14,699.
25 b. Ex. 2001, T. 14,700.

1 in the hands of the enemy are to be treated in the same
2 way as secret documents and destroyed when finished
3 with." ^{c.}

4 From these documents it is clear that the
5 Japanese Government was fully cognizant of the manner
6 in which prisoners of war were treated and authorized
7 and condoned such treatment as a matter of policy.

8 Amendments of Japanese Law Since 7 December
9 1941 which in Themselves Authorized Breaches of the
10 Hague Convention 1907 and the Geneva Convention 1929.

11 J-129. Reference has already been made in
12 paragraph J-124 hereof to the fact that the cumulative
13 effect of Article 5 of "Detailed Regulations for the
14 Treatment of Prisoners of War" ^{a.} and Article 10 of the
15 Discipline Law for Prisoners of War ^{b.} whereby prisoners
16 of war were compelled to take an oath not to escape and
17 if they did so were subject to a minimum penalty of
18 one year's imprisonment. In the same paragraph the
19 compulsory administration of an oath not to escape has
20 been shown to violate Article II of the Hague Convention
21 1907, whilst the imposition of any punishment greater
22 than a disciplinary punishment for escaping has been
23 shown in paragraph J-126, to violate Article 8 of that
24

25 (J-128. c. Ex. 2011, T. 14,718.

J-129. a. Ex. 1965 (7 & 8), T. 14,439.

b. Ex. 1965 (29-30), T. 14,439.)

Convention and Article 50 of the Geneva POW Convention
1929.

Articles 5 and 10 referred to above were
introduced into Japanese law in March and April, 1943,
respectively.^{c.} True it is that Article 10 of the
Discipline Law for Prisoners of War had a somewhat
similar counterpart in Article 5 of Law No. 38 of 1905
which provides that if a prisoner of war, after giving
his parole not to try to escape, breaks the parole he^{d.}
shall be punished with imprisonment with heavy labor.
But at that time the parole referred to was a voluntarily-
given parole in return for which a prisoner received
his liberty.

Similarity of Pattern of Crimes Committed
Throughout Japan and Areas Occupied by Japanese.

J-130. The fact that the crimes committed
by the Japanese were found to be the same in nature,
and in the manner of their commission, throughout Japan
and many of the areas occupied by the Japanese would
give rise to an almost irresistible inference that they
had not been committed at the whim of the individual
perpetrators but as part of a common plan. It argues
very strongly that they were committed as a result of
(J-129. c. Ex. 1965 (7, 8, 29, 30), T. 14,439.
d. Ex. 3133, T. 27,909.)

1 special training towards that end, or at the least as
2 a result of instructions emanating from some central
3 authority.

4 (i) The Making of Oaths or Agreements Not to
5 Escape.

6 J-131. The attention of the Tribunal is here
7 invited particularly to the coercive methods adopted
8 by the Japanese to compel prisoners to make the oath
9 or agreement and to the fact that the prisoners were
10 not given their liberty after having given the under-
11 taking not to escape.

12 J-132. At Changi Prisoner of War Camp in
13 Singapore on 31 August 1942, all prisoners were
14 ordered to sign a declaration that they would not escape.
15 They refused to do so. On the evening of 2 September,
16 16,000 prisoners were herded into Selarang Barrack
17 Square and kept there without food or latrine facilities
18 for four days at which time the prisoners agreed, under
19 compulsion, to sign the declaration.
20 a.

21 J-133. At River Valley Road and Havelock Road
22 Camps Colonel Heath, who was in command of the prisoners,
23 refused to have them sign the declaration because it
24 was illegal. He was told by the Japanese that any
25 prisoner who failed to sign would be confined in a
(J-132. a. T. 5408-13; Ex. 1517, T. 12,930.)

1 narrow space and punished until he signed it.^{a.} Having
 2 learned of what happened at Changi he ordered the
 3 prisoners to sign it.

4 J-134. At North Point and Shamshuipo Camp
 5 in Hong Kong in May, 1942, all prisoners were compelled
 6 to swear an affidavit that they would not escape. Some
 7 of the prisoners refused to sign and were thereupon
 8 imprisoned in Stanley Gaol. Here they were compelled
 9 to kneel all day and if they moved were beaten with a
 10 rubber hose. Towards the end of May they were not
 11 allowed any food and as a result became so weak that
 12 they made the required affidavit.^{a.}

13 J-135. Earlier, in January, 1942, patients
 14 at the Bowen Road Hospital were taken out and placed
 15 in the hot sun under threat to leave them there until
 16 all staff and patients had signed the declaration.^{a.}

17 J-136. Early in September, 1942, at Sandakan
 18 Camp in Borneo, the prisoners were ordered to sign a
 19 declaration that they would not escape. The Commanding
 20 Officer, Lt. Colonel Walsh, said that he would not sign
 21 the declaration. He was immediately tied up and
 22 beaten and a firing party was detailed to execute him.
 23 To save his life the prisoners signed the declaration.^{a.}

24 (J-133. a. T. 5408-13.

J-134. a. T. 13,128; 13,144-5; 13,153.

J-135. a. Ex. 1608, T. 13,184.

J-136. a. T. 13,347, 13,387, 13,393; Ex.1667, T.13,410.)

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 25 J-134. a. T. 13,128; 13,144-5; 13,153.
 J-135. a. Ex. 1608, T. 13,184.
 J-136. a. T. 13,347, 13,387, 13,393; Ex.1667, T.13,410.)

1 J-137. At Tandjong Priok in Java an officer
 2 was badly beaten with a chain for refusing to sign the
 3 a. declaration. Similar treatment was meted out to offi-
 4 cers and men at Cycle Camp in Batavia and they were
 5 told that the prisoners would be deprived of all food
 6 b. until they signed.

7 J-138. In September of 1942 at Palembang,
 8 Batavia, because they refused to sign the declaration
 9 not to escape, 650 prisoners were locked up in a small
 10 school, the sick were thrown out of the hospital and
 11 the senior officers put in solitary confinement. On
 12 account of the death of one of the sick the prisoners
 13 a. signed on the eighth day.

14 J-139. At Zentsuji Camp 41 prisoners were
 15 kept in confinement from 14 June 1942 until 23 Septem-
 16 ber 1942 for refusing to take the oath and were finally
 17 threatened with execution if they persisted in their
 18 a. refusal.

19 Brigadier Blackburn refused to sign the non-
 20 escape form at Karenko Camp in Formosa; he was stripped,
 21 beaten and kicked and left in a cell overnight without
 22 clothes. He finally signed it, informing them that he
 23

24 (J-137. a. Ex. 1673, T. 13,446.

b. T. 11,533, 11,567, 11,585.

25 J-138. a. T. 13,562.

J-139. a. T. 14,964.)

b.
did so under protest and duress.

1 J-140. It was obviously to the advantage
2 of the Japanese Government to enforce the signing of
3 such agreements, as the very severe penalties with
4 which they punished escapes by prisoners who had signed
5 the form of agreement would strongly deter them from
6 escaping, and so enable the Japanese to reduce the num-
7 ber of guards employed.
8

9 (ii) Massacres.

10 J-141. The massacres disclosed by the evidence
11 divide themselves into three classes: The first of
12 these are massacres committed during the course of, or
13 immediately after the completion of, some military
14 operation: The dual policy behind them would appear
15 to be to relieve the army of the embarrassment of
16 guarding prisoners of war and to terrorize their
17 opponents.
18

19 The greatest of such massacres was the rape
20 of Nanking. This has already been referred to in
21 paragraphs J-61 to J-63, and as the facts of this event
22 will be given in some details by counsel dealing with
23 the summation in regard to the accused MATSUI it is
24 not proposed to make any further reference to it here.

25 At Hong Kong between the 17th and 25th
(J-139. b. T. 11,542-5.)

December 1941; the Japanese massacred about 150

1 Canadians, mostly medical personnel, who had surrendered
 2 and been taken into Japanese custody.^{a.} But this was
 3 not the worst part of the story; they then proceeded
 4 into St. Stephen's Hospital where they bayoneted to
 5 death or beheaded 70 patients and 25 members of the
 6 staff.^{b.}

7
 8 Some 2000 miles away another Japanese force
 9 was making its way down the Malayan Peninsula and was
 10 about to distinguish itself in a similar manner. On
 11 27 December 1941 they captured 75 Indian troops near
 12 Ipoh, tied them up and bayoneted them to death.^{c.}

13 Almost a month later they captured and massacred 150
 14 Australian and Indian troops at Parit Sulong.^{d.}

15 And then came the 14th and 15th February 1942.
 16 Near Katong Hospital the personnel of an ambulance
 17 were captured and killed,^{e.} and later on the same day
 18 troops of the Imperial Guard Division went through the
 19 ground floor of the Alexandria Hospital, Singapore,
 20 bayoneting patients as they lay in their beds, and even
 21 on the operating table. Members of the staff were
 22 treated in the same manner. A further massacre on the

23 (J-141. a. Ex. 1594-1601, T. 13,167-75; Ex. 1608, T.13,184.
 24 b. T. 13,114-7; Ex. 1590-3, T. 13,163-6.
 25 c. Ex. 1522, T. 12,946.
 d. Ex. 1525, T. 12949.
 e. Ex. 1503, T. 12,899.)

1 following day brought up the grand total of those mur-
2 dered at that hospital to three hundred and twenty-
3 f.
4 three.

5 Reference has already been made in paragraphs
6 J-18 to J-20 of the summation to the massacre of 5000
7 Chinese on the 22d and 23d February at Singapore.
8 Between March and April 1942 many thousands Chinese
9 were arrested and executed in Johore Province. g.

10 THE PRESIDENT: We will adjourn until half-
11 past nine tomorrow morning.

12 (Whereupon, at 1600, an adjournment
13 was taken until Thursday, 19 February 1948, at
14 0930.)

15 - - -

16 (J-141. f. Ex. 1506, Ex. 1507, T. 12,904-7.
17 g. T. 5644; Ex. 476, T. 5624.)
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